

August 1, 2006



**TRANSCRIPT**  
**August 1, 2006**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman

**ABSENT**

Michael Subin



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1 [MUSIC]

2  
3 Council President Leventhal,  
4 Good morning, everyone. Well, it's the hottest day of the year and it's the last Council  
5 session before we take our August break. For anyone who's watching at home, all the  
6 cautions are very serious. Please drink a lot of water. We've got several days of very  
7 intense heat over the next -- this week. And also I know my colleagues join me in  
8 sending our best wishes to our colleague Mike Subin, who was involved in a very  
9 serious bicycling accident and has been hospitalized. We are hoping that he'll  
10 recuperate promptly and he's in our thoughts. We have an Invocation from  
11 Vankataramany Balakrishnan from the Sri Siva Vishnu Temple.

12  
13 Vankataramany Balakrishnan,  
14 Almighty God, You are indeed One, but show Yourself in many forms and assume  
15 many names, like Siva and Vishnu, Allah and Jesus, Buddha, and many others. I stand  
16 among the enlightened leaders of our beloved Montgomery County, which is famous for  
17 its strength of faith and mutual tolerance. Oh God, bless all these leaders of men and  
18 grant unto them the motivation and the capacity to serve all people in this county with  
19 justice and compassion. I now chant the prayer in Sanskrit. This has been chanted daily  
20 in Hindu temples for thousands of years. That meaning is universal. An English  
21 translation will follow. [CHANTING] Now for the brief English translation. Let us all be  
22 safe together. Let us enjoy the good things of life together. Let us do noble and valorous  
23 deeds together. Let us function together effectively and vigorously without mutual  
24 jealousy or hatred. Let there be peace, peace, peace. We pray for the welfare and  
25 success of all, [INAUDIBLE] wisely, and well, justly protecting all people. Let all good  
26 people flourish and let [forms] and animals also nourish. Let everyone everywhere live  
27 happily. Let there be timely rains. Let the land produce plenty of grains. Let this county  
28 be free from all disturbances. Let good people go about fearlessly. Let families live  
29 happily with children and grandchildren. Let the poor become rich. Let all live happily for  
30 a hundred years. Amen.

31  
32 Council President Leventhal,  
33 Amen. What word do we use to describe the faith leader at a Hindu temple? Are you a  
34 pastor or a minister or what word do we use?

35  
36 Vankataramany Balakrishnan,  
37 [NO MIC USED] I am a volunteer [INAUDIBLE].

38  
39 Council President Leventhal,  
40 I see. And does a Hindu temple have a central leader?

41  
42 Vankataramany Balakrishnan,  
43 [INAUDIBLE] In india, and here I am [INAUDIBLE].



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1 Council President Leventhal,  
2 Thank you very much. Is a Hindu temple led by a minister or by one particular leader of  
3 the service, or it's not run that way?

4  
5 Vankataramany Balakrishnan,  
6 [INAUDIBLE] Everyone is welcome to come. In fact if your group would like a couple  
7 agendas [INAUDIBLE].

8  
9 Council President Leventhal,  
10 Sometime I'd like to do that. Thank you very much for coming today. And so I have a  
11 proclamation. I have to sign it.

12  
13 Councilmember Praisner,  
14 Technicality.

15  
16 Council President Leventhal,  
17 Did you read my revised statement? Good. Is it okay? Okay, will Planning Board  
18 Chairman Derick Berlage please join me? Montgomery County has a tradition of good  
19 management and good government. And as we look back on our County's history, we  
20 think of individuals like Stella Werner, for whom had building is named; Norman  
21 Christeller, who served on the County Council and later served as a distinguished  
22 Chairman of the Planning Board; Neal Potter, who served on the County Council longer  
23 than any other member of the County Council since the Council was created under the  
24 Charter also then served a term as County Executive before going back to the County  
25 Council. We have many others who perform distinguished service as Councilmembers  
26 and in other walks of public service in the county. And as historians -- I'm an amateur  
27 historian. I hoped one day I might write a book about Montgomery County history or  
28 politics and one day maybe I'll get there. I've always enjoyed working with and getting to  
29 know my predecessors on the Council, and those who have served in important  
30 positions in county government because there are so many who've done such  
31 extraordinary service. And for me personally, it's a tremendous honor to have had the  
32 opportunity these last four years to have been part of that tradition. And as historians  
33 write about those who have served honorably and well and who love this county, there  
34 is no question that Derick Berlage is among those who have given his very, very best,  
35 his intellectual ability, served with courage, with great love for this county, really put his  
36 heart and certainly his brain into it. One of the things that I say about the privilege of  
37 public service is you get to use your whole brain. It really challenges every skill you ever  
38 had and requires you to develop new skills you never thought you'd need every single  
39 day, management skills, people skills. You've got to look good, you've got to feel good,  
40 you've got to have stamina and Derick Berlage has been in the arena now for 16 years  
41 as a Councilmember and Planning Board Chairman. We're very, very proud of Derick's  
42 service. He's a friend to all of us. We know him very, very well and he is absolutely part  
43 of our great tradition of good government and good management in Montgomery  
44 County. We're proud of him and he has much, much to be proud of, including our Forest



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1 Conservation law, the regime of environmental protection, the work he did for Silver  
2 Spring, Takoma Park, Wheaton, and Kensington when he was District Five  
3 Councilmember and the extraordinary work he did making sure that we preserve our  
4 special places as Planning Board Chairman, that we look forward to a bright and green  
5 future in Montgomery County, that we continue to maintain the best park system in  
6 America, and all of the many other ways in which the Park and Planning Commission  
7 touches our lives and preserves our neighborhoods and expands opportunity for all of  
8 our people. So we're very proud of you, Derick, and we have this Proclamation for you.  
9 And I think we have another token to give you. It's there. Okay, good.

10  
11 Councilmember Silverman,  
12 Ah, the Steiner Collection.

13  
14 [LAUGHTER]

15  
16 Councilmember Praisner,  
17 It's the Bill Hanna Collection.

18  
19 Council President Leventhal,  
20 I'm trying to get away from actually reading Proclamations, but this one, I think, is useful  
21 because it does provide a litany of specifics about Derick, and so I'm going to read it  
22 very briefly. WHEREAS, Derick Berlage is stepping down after four years at the helm as  
23 Chairman of the Montgomery County Planning Board; and WHEREAS, Derick Berlage's  
24 tenure has seen both tremendous accomplishments and significant challenges, and in  
25 both cases the Planning Board and public in general benefited enormously from the  
26 experience, integrity, energy, and determination that Mr. Berlage brought to bear on a  
27 wide range of situations; and WHEREAS, during Derick Berlage's tenure, the Planning  
28 Board acquired control over 1,000 acres of legacy open-space properties and also  
29 added an additional 1,600 acres of new park land while reducing the park major  
30 maintenance backlog by 80%; and WHEREAS, Derick Berlage been a forthright  
31 champion of protecting our agricultural reserve, fostering smart growth, advancing  
32 affordable housing, and has not hesitated to defend these issues and others against all  
33 Commerce; and WHEREAS, Derick Berlage's efforts at Park and Planning come on top  
34 of 12 years of distinguished service as a member of the Montgomery County Council,  
35 including service as its President. NOW, THEREFORE, be it resolved that the  
36 Montgomery County Council, on behalf of a grateful county, extends its best wishes to  
37 Derick Berlage for his four years as Chairman of the Montgomery Planning Board, and  
38 looks forward to working with him in the future. Presented this first day of August in the  
39 year 2006.

40  
41 [APPLAUSE]

42  
43 Derick Berlage,  
44 Thank you. Thank you very much.



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1  
2 Council President Leventhal,  
3 And we have this presentation to you, as well. I'm told that you're the first person in  
4 history to have received two of these plates.

5  
6 Derick Berlage,  
7 Wow. Ah, yes. Thank you, Merle Snider. Beautiful. Thank you very much. Brief rebuttal.

8  
9 [LAUGHTER]

10  
11 Derick Berlage,  
12 George, thank you so much, and thank you to all of my colleagues on the Council,  
13 present and former colleagues, as well. And the Council staff, many of whom are here. I  
14 was especially thrilled to be able to see so many of you at the breakfast that you all  
15 provided this morning in my honor, because I know how hard the Council works. I know  
16 how hard the Council staff works. I know how hard your job is. And it means a lot,  
17 therefore, to have these tributes from you. I do want to take a moment also to thank the  
18 staff at Park and Planning. We'll of course be having a larger event on Thursday where  
19 I'll have an opportunity to thank all of them, but this is an opportunity to do it publicly,  
20 because the last four years have been tremendously rewarding for me and for  
21 Montgomery County because of the very hard work that the Park and Planning staff do.  
22 George talked about some of their accomplishments in the resolution, and I appreciate  
23 your highlighting that. The 1,600 acres of park land and the major improvements in park  
24 maintenance and park management and the way that the staff at Park and Planning,  
25 with the Board and with the support of the Council, has taken Smart Growth from a  
26 buzzword to an abiding philosophy that influences every decision that we make as a  
27 County. And we do watch you and we listen to you on the Council. And we know the  
28 extent to which you really are supporting that important vision for the future of our  
29 county. Thank you. And I want to thank the staff of Park and Planning, who make it  
30 possible for the leaders of our county to have the very best planning vision that they  
31 have anywhere in the country. And even when we confront a crisis, as of course we did  
32 in the past year in connection with Clarksburg, a great organization turns a crisis into an  
33 opportunity and that's exactly what Park and Planning has done. And I leave knowing  
34 not only that the organization has great leadership to take it forward, but that already the  
35 organization has taken the experience of the past year and made it an opportunity to  
36 strengthen Park and Planning, to make it a model of transparency and accountability  
37 and accuracy. And those aren't just buzzwords, either. The staff at Park and Planning,  
38 the Board, everyone who's involved in the land use process today is truly committed to  
39 making those things happen. And they will happen. But the most important thing I need  
40 to do is thank the community of Montgomery County in the largest sense. George, the  
41 Proclamation says the Montgomery County community is grateful to me. Well, I'm  
42 grateful to Montgomery County because the last 16 years, I've had the most rewarding  
43 set of jobs that I could ever have imagined in my wildest dreams. And it's because the  
44 people of Montgomery County helped to support me in doing those jobs and because



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1 the people of Montgomery County take public service so seriously. That's what makes  
2 our jobs wonderful. So to all of them I say thank you, and to all of you, thank you very  
3 much.

4  
5 [APPLAUSE]

6  
7 Council President Leventhal,

8 All right. Very good. And we thank all the staff of Park and Planning, who are here to  
9 support the Chairman. We have excellent people. And if I call out a particular name, I'm  
10 afraid I'll neglect some other important folks. And Derick has some former staff who are  
11 here who have gone onto other important positions in county government who worked  
12 for him on the Council. And again, I don't want to call out names because I may neglect  
13 important people, but we know you're here and we know that Derick has been a mentor  
14 and a role model for many of us, certainly including myself. So thank you to all who've  
15 helped Derick achieve the great things he's achieved. We now turn to general business.  
16 Ms. Lauer, are there agenda or calendar changes?

17  
18 Council Clerk,

19 The Council is announcing its public hearing on the FY '08 Annual Budget Priorities and  
20 Performance Measures, That will be September 19th at 7:30 PM. We do -- there is a  
21 couple little changes. On the Consent Calendar, we have a special appropriation being  
22 introduced for the soccer club game-fee subsidies at SoccerPlex. We now have the  
23 amount. It's \$142,450. On the Consent Calendar, Item BB, that should say "action," not  
24 "introduction." And in the legislative session, Bill 37-06 is being introduced, Property Tax  
25 Credit - Green Buildings. We have additional sponsors, Councilmembers Subin, Denis  
26 and Knapp. We did receive one petition this week. That's from the owners of the Glen  
27 Hill neighborhood requesting repaving of streets with asphalt. That's it.

28  
29 Council President Leventhal,

30 Okay, thank you very much. Are there minutes for approval?

31  
32 Council Clerk,

33 We have the minutes of June 29th and July 18th for approval.

34  
35 Council President Leventhal,

36 Is there a motion to approve the minutes?

37  
38 Council Clerk,

39 Mr. Denis has a [INAUDIBLE].

40  
41 Council President Leventhal,

42 Can we approve the minutes, Mr. Denis, and then I'll call on you?

43  
44 Councilmember Denis,



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1 [INAUDIBLE]

2  
3 Council President Leventhal,

4 Okay, well, let's just do -- we've got a motion now before us, offered by Mr. Knapp and  
5 seconded by Ms. Praisner, to approve the minutes of June 29th and July 18th. Those in  
6 favor will signify by raising their hands. It is unanimous. Mr. Denis?

7  
8 Councilmember Denis,

9 Thank you, Mr. President. The petition that was presented to us was from a community  
10 in District Three actually, which I'm not honored to represent. I think [the street or] the  
11 community is Glen Hill about tar and chip. And I've received numerous complaints from  
12 residents of Merrywood Road also about tar and chip. Merrywood Road is in Bethesda.  
13 And I must say that I hear nothing but complaints from concerned residents whenever  
14 tar and chip has been used in residential resurfacing. Residents of Maidens Bower in  
15 Potomac are still angry over the application last year on their street. I'm told that 15  
16 years ago the Council directed that tar and chip be discontinued because of public  
17 discontent. Considering the history and the ongoing complaints, I'm also considering  
18 introducing a Council Resolution when we return from our recess asking the County  
19 Executive and the Department to cease its use. I'm also meeting with the Director of  
20 Public Works and Transportation Art Holmes this Thursday on this matter. Thank you,  
21 Mr. President.

22  
23 Council President Leventhal,

24 Mr. Denis, thank you. I've also read quite a few messages from constituents about tar  
25 and chip. I just want to make a general comment in response to your observation, which  
26 is that the role of the County Council, it seems to me, is to serve as an -- we have many  
27 roles -- but one is to serve as an intermediary between the public that elects us and that  
28 we represent and the agencies that serve the public. And at times, I'm afraid tar and  
29 chip is one example where the correspondence that has come from the Council offices  
30 have seemed to be taking sides on behalf of our excellent County departments, rather  
31 than really vigorously ensuring that we are addressing the concerns of the constituents.  
32 So tar and chip has been on my mind as an example of where I think we here in this  
33 building need to make sure that we're getting the constituents' questions addressed and  
34 the constituents' concerns addressed, not simply serving essentially to amplify the  
35 existing views of County departments. I'm not, at this moment, taking sides on a  
36 potential resolution that you may offer, Mr. Denis, but what I do want to make sure is  
37 that when we hear from a volume of constituents, as we have on this issue of tar and  
38 chip paving, that we are really looking into the constituents' concerns. We're not simply  
39 repeating back what we've been told from departments. So I thank you for the  
40 opportunity to make that observation, Mr. Denis. Mr. Andrews.

41  
42 Councilmember Andrews,

43 Thank you, Mr. President. I wanted to note that my office has received a number of  
44 complaints about the tar and chip method and particularly the implementation of it, and



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1 the Department has acknowledged that there have been some problems in how it's  
2 been done, and I do think it would be worthwhile for the Council to review whether this  
3 method can actually be done in a satisfactory way. There are ways to improve it, but it  
4 still may not work to the satisfaction that it needs to work. It is important when it's  
5 applied that it be done in a way that there is not a lot of time in between the stages of  
6 the process, because otherwise there is more dust than otherwise. But it is problematic,  
7 and complaints are numerous, and while the Department has responded promptly to the  
8 complaints, that doesn't address the underlying issue at this point. So I think it is  
9 appropriate for review when we come back. Thank you.

10  
11 Council President Leventhal,  
12 Great. Thank you, Mr. Andrews. We turn now to the Consent Calendar. Is there a  
13 motion for approval? Mr. Knapp has moved and Mr. Andrews has seconded approval of  
14 the Consent Calendar. Mr. Andrews has comments.

15  
16 Councilmember Andrews,  
17 Thank you, Mr. President. I want to comment on Item C and Item H. Item C is the  
18 release of the Office of Legislative Oversight's report, evaluating the police department's  
19 Victim Assistance Unit. The Council asked for this review to look at how the program is  
20 working. This is a very important program and one that the Public Safety Committee has  
21 followed closely. And indeed about five years ago, the Council funded the addition of  
22 full-time Victim Assistants to the police department to ensure that victims aren't lost in  
23 the criminal justice system, that they get the attention they deserve, and that they help --  
24 get assistance navigating the criminal justice system, which can be a foreign land to  
25 many people. And so that was the idea behind the report. The report is another example  
26 of thoroughness and excellence. It essentially confirms that the Victim Assistance Unit  
27 is working well and reaching out to thousands of victims every year to help provide  
28 appropriate referrals and make sure that victims understand the system. The Public  
29 Safety Committee will have a work session on this on September 25th and invite all  
30 those interested in issues affecting victims of crime to join us and look at how we can  
31 make the program even better. But it looks like it's off to a good start and I look forward  
32 to working with everybody to continue to make it as good as it can possibly be. On Item  
33 H which is the resolution to approve the County's Highways Noise Policy. I very much  
34 appreciate the attention given to this issue by the Transportation and Environment  
35 Committee. Noise from highways, from major roads, is a significant issue affecting  
36 many of our constituents and a great deal of work has been done in the past few years  
37 to put together a County policy that was adopted about three, four years ago to  
38 implement the concerns. Several of my constituents, Bill and Pat Labuda in particular,  
39 have been extremely active on this issue. Bill Labuda is an acoustical expert who  
40 served on the task force that developed the Noise Wall Policy and I appreciate, as I  
41 said, the T&E's review of this. I do think that there are some substantive issues that  
42 need to be addressed. And the Committee is recommending that there be a task force  
43 established, or a reconvening of the task force, to review suggestions for the policy and  
44 I look forward to hearing the results of that. I hope that the task force will come back as



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1 soon as feasible with recommendations so they'll be ready in time for the next Capital  
2 Improvements Budget and that we can work them into that budget. Any executive  
3 suggestions that the Executive Branch may have for changing the policy can be actually  
4 then implemented in how noise walls are funded and approved by the Council. So I'm  
5 happy to support this, but I do hope that the task force will get back to the Executive  
6 Branch and to the Council in a timely way. And I know that the dedication that's been  
7 shown by the members previously is there again and this is a significant issue and it's  
8 one I think that will come up later in the day as well. So I thank the Committee for its  
9 attention to this important issue.

10  
11 Council President Leventhal,  
12 Thank you, Mr. Andrews. Vice President Praisner.

13  
14 Councilmember Praisner,  
15 Thank you very much. I just wanted to make a couple of comments on a few items. For  
16 the Special Appropriation Item B for the National Philharmonic, I believe this helps with  
17 the funding to allow our second graders the wonderful opportunity to attend the concerts  
18 at Strathmore, and I just wanted for the public hearing on the 19th, since it is a Hearing-  
19 Action item, to have it clear on a piece of paper how much Montgomery County Public  
20 Schools is contributing to this effort for its children. Secondly, I want to be clear about  
21 something on H, which is the Highway Noise Policy. We have several communities that  
22 we have been told through the review on the policy that they are, in essence, in the  
23 queue to be considered from a funding perspective as we go forward. I want to make  
24 sure that those communities will not be negatively impacted by modifications to the  
25 noise policy, since they've been already understanding of the facts that they have a  
26 noise problem and that depending upon revenue and the extent to which -- the next  
27 steps in the process, meaning the support from the community that has to come forward  
28 when you have a project -- that they won't be negatively impacted by anything here in  
29 front of us.

30  
31 Glenn Orlin,  
32 I can answer that. Glenn Orlin, Council Staff. The technical changes that are here will  
33 not affect any of that. These are all adjustments that are needed for walls that have  
34 already been approved. However, one of the reasons why DPWT and the Committee  
35 agreed with putting off the broader issues until the next cycle is because many of the  
36 issues raised, in fact most in raised, would change the order of what was on the queue,  
37 so there will be winners and losers. And the idea was to try to get more people involved  
38 -- constituent stakeholders involved before we make the change.

39  
40 Councilmember Praisner,  
41 Okay, so no one at this point on the queue, and knowing that they're in the queue, is  
42 negatively impacted, but you would encourage any communities that have the issue of  
43 noise walls, et cetera, to be engaged in this broader deliberation on policy that will begin  
44 soon.



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Glenn Orlin,

That's right. DPWT is going to be setting up -- reconstituting this task force is making sure there is representation from each of the...

Councilmember Praisner,

Okay, then I would request that each of the Councilmembers be individually contacted to know about the structure of the Committee, et cetera, so that we are personally aware of what's going to happen, rather than just assuming that we know. Thank you very much. I also just wanted to comment thanks, consistent with Mr. Andrews' comments, thank OLO on the issues of domestic violence. This has been an issue that many Councilmembers have been concerned about. I'm sorry Mr. Subin isn't here today, because that's been a major concern when we've talked about services for the victims and I appreciate very much the report. I want to make a comment about two other items. They are the "I" and "J" which is the resolutions the Committee has approved -- MFP Committee -- related to use of our rights-of-way for franchise agreements, and request again that before -- sometime during this next month or two, that we get format written confirmation of the kind of database and as-builts that DPS is keeping and that the cable office is keeping, about all of the individuals which we welcome in our rights-of-way to provide service, but where we want to make sure, given the fact that the right-of-way is not an unlimited assess, and that there are impacts on the neighboring user of the right-of-way, that we know where those cables and things are laid so that we don't have any problems. Thank you.

Council President Leventhal,  
Mr. Silverman.

Councilmember Silverman,

Thank you, Mr. President. I just wanted to reference the Special Appropriation to Park and Planning's operating budget for soccer club game fees at SoccerPlex which I'm introducing. This is part of a package which involves what we will take up later on, which is the SoccerPlex lease amendments. The County Executive had put \$100,000 in his budget for next year, which we did not approve because we wanted to defer it until we reviewed whether there were going to be certain lease amendments. Those lease amendments have come out of committee and I would anticipate would be passed by the County Council later today, but to keep a commitment that the County Executive made and some of us made to try to reduce fees at the SoccerPlex for the clubs that are playing -- this is not a subsidy of the Foundation. This is a funding stream to help defer some of the fees that are paid by the clubs that are playing at the SoccerPlex. That's the purpose of the amendment. It will provide \$50 per game subsidy for teams playing at the SoccerPlex, which pay a fee that is significantly higher -- I think six times higher than what they have to pay on county fields. So look forward to the public hearing in the fall. Thank you.



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1 Council President Leventhal,  
2 Ms. Floreen.

3  
4 Councilmember Floreen,  
5 Thank you, Mr. President. First, I just wanted to comment on the Highway Noise Policy  
6 issue. That's a significant matter for communities across the county and we are  
7 privileged indeed to have such active and engaged residents that they were able to  
8 raise a number of important questions that we felt needed to be more fully addressed in  
9 a bigger context. So that will address Ms. Praisner's concerns and also engage all the  
10 folks in different parts of the county in looking at this issue. So I'm hopeful that the  
11 bigger policy issues, with respect to noise control, will be addressed in that context. The  
12 other thing is, Mr. President, I wanted to pull item number BB because I have a  
13 question, not an opposition to it. This is the action on the abandonment of a portion of  
14 Woodmont Avenue. And I had some questions of staff and I'm told they're in the  
15 audience here. So if we could do that perhaps after the Consent Calendar. Thank you.

16  
17 Council President Leventhal,  
18 Without objection, Item 2BB will be taken up after passage of the Consent Calendar.

19  
20 Councilmember Floreen,  
21 Thanks.

22  
23 Council President Leventhal,  
24 Mr. Denis?

25  
26 Councilmember Denis,  
27 Thank you, Mr. President. On Item "S," I just wanted to indicate I'm particularly pleased  
28 by the reappointment of Ismail Kenessy to the Community for Ethnic Affairs and on Item  
29 "Y" the appointment of Daryl Plevy to be an ex officio member of the Advisory Board for  
30 the Montgomery Cares program. On Item Omega, Item Z, on our Abandonment issue  
31 that's remaining, Willowbrook Drive in Potomac, I just want to indicate my support for  
32 approval with the conditions suggested by the County Executive and the Hearing  
33 Examiner, which are included in the resolution.

34  
35 Council President Leventhal,  
36 Mr. Andrews.

37  
38 Councilmember Andrews,  
39 Thank you, Mr. President. I appreciate Ms. Praisner's point about the Highway Noise  
40 Policy, that the approval that is in the resolution does not change the current order of  
41 the projects or affect their timing. But while we've got Glenn Orlin here, I did want to ask  
42 what is the latest schedule for the first noise walls that have been approved for Shady  
43 Grove Road?



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1 Glenn Orlin,

2 I'm not sure if the Department's [here]. The last time I talked with the Department was  
3 about two weeks ago is that the Shady Grove walls will go up in Fiscal Year 2007. My  
4 understanding it'll be after the first of the year, though.

5  
6 Councilmember Andrews,

7 Edgar is behind you, I see. Maybe he knows.

8  
9 Edgar Gonzalez,

10 He's right.

11  
12 Council President Leventhal,

13 Come to the microphone. It's being televised. You need to introduce yourself and speak  
14 into the microphone.

15  
16 Councilmember Andrews,

17 A man of little words.

18  
19 Edgar Gonzalez,

20 Typically -- Edgar Gonzalez, Deputy Director for Transportation. The noise walls have  
21 been progressing nicely. Actually, the first set of walls that we're going to be building  
22 that are under construction are the ones along Montrose Parkway West, but Shady  
23 Grove will be the next set of walls that we will be building. And the reason for the  
24 changes is tweaking, minor tweaking on the policy so that it's a little more transparent  
25 and easier for the communities to understand what we were doing. So that's all there is  
26 to it, and we'll involve representative from each Councilmanic District in the task force  
27 so that there is a balancing of interests. But Shady Grove will be the spring, spring of  
28 '07.

29  
30 Councilmember Andrews,

31 Okay, and what's the expected completion date?

32  
33 Edgar Gonzalez,

34 Oh, it should be probably within less than two months.

35  
36 Councilmember Andrews,

37 Good. Very good. Thank you.

38  
39 Council President Leventhal,

40 Okay, regarding Item 2E, a resolution concerning stormwater, I've asked -- this is now  
41 the third time I've asked to be added as a cosponsor and my name is still not listed. So  
42 in the enrolled version, I would appreciate it if I would be listed as a cosponsor on Item  
43 2E.



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1 Councilmember Andrews,  
2 Same here.

3  
4 Council President Leventhal,  
5 And Mr. Andrews is...listed. You're on there, Phil, but they missed the Council  
6 President, so... This is actually -- Yeah, this is my third request. Maybe the third time will  
7 be the charm.

8  
9 Councilmember Praisner,  
10 It's the titles that cause the problem.

11  
12 Council President Leventhal,  
13 Yeah. Okay, we're now ready to vote on the Consent Calendar. Those in favor of the  
14 Consent Calendar will signify by raising their hands. It is unanimous among those  
15 present. We have now -- we are now going to turn to Item BB, the abandonment of a  
16 portion of Woodmont Road.

17  
18 Mike Cassedy,  
19 I'm Mike Cassedy with with Department of Public Works and Transportation and I  
20 administer the abandonment process.

21  
22 Council President Leventhal,  
23 Chairwoman Floreen.

24  
25 Councilmember Floreen,  
26 Thank you. Thank you, Mr. Cassedy. I just wanted to understand exactly how this is  
27 going to work. I looked over our recommendation for abandonment of Woodmont  
28 Avenue. I understand it's part of the Lot 31 project, but I think it would be helpful for us  
29 all to appreciate what the plan is and how this is going to be coordinated so that the  
30 public can -- how the access in that area's going to be addressed.

31  
32 Mike Cassedy,  
33 Okay, I'll try to address those questions. It actually involves Lot 31 and 31A which is  
34 across the street. And in essence, what has been proposed is to shift the right-of-way to  
35 the southwest into part of where the Lot 31A is. That's due to part of the development  
36 plan involves a structured parking garage underground to provide some 1,200 spaces to  
37 replace the 270, I think we have, on the surface. So the abandonment of course is  
38 contingent upon having the new right-of-way dedicated, built to our standards, and  
39 accepted.

40  
41 Councilmember Floreen,  
42 And that right-of-way will be owned by the County?

43  
44 Mike Cassedy,



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1 Dedicated.

2  
3 Councilmember Floreen,  
4 It will be dedicated to the County?

5  
6 Mike Cassedy,  
7 Yes, so it will shift slightly to the southwest from the alignment here. This is Bethesda  
8 Avenue. and it's from Bethesda Avenue to Miller Avenue comes in here, that area just  
9 adjoining the parking lots.

10  
11 Councilmember Floreen,  
12 And it's going to be moved over several feet or...?

13  
14 Mike Cassedy,  
15 That's right, approximately the same direction. I imagine it will be a bit more of a curve  
16 here. I haven't seen the plans, but they entail just moving it slightly to the southwest.

17  
18 Councilmember Floreen,  
19 And that will all occur -- do you have any -- I guess it's associated with the zoning case,  
20 is that correct?

21  
22 Mike Cassedy,  
23 Well, I know that that's associated with it, too, but the actual plan of development, I don't  
24 know if that's been before the Planning Board yet.

25  
26 Councilmember Floreen,  
27 Okay, so that's going to -- and this will all occur whenever that is finalized?

28  
29 Mike Cassedy,  
30 That's right.

31  
32 Councilmember Floreen,  
33 Okay. So the change -- the abandonment, which we're approving now, would not go into  
34 effect until all of the decisions associated with that project and where the right-of-way  
35 actually would be is finalized?

36  
37 Mike Cassedy,  
38 Or more to the point, that the new right-of-way has been dedicated. It has been paved  
39 at the developer's expense and accepted by the County.

40  
41 Councilmember Floreen,  
42 So we won't abandon one until we have the other?

43  
44 Mike Cassedy,



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1 That's right.

2  
3 Councilmember Floreen,

4 Okay. That's what I wanted today be clear about. Thank you very much.

5  
6 Council President Leventhal,

7 I appreciate Ms. Floreen raising questions about this because the very first  
8 abandonment that I voted for on this Council was the abandonment of Blair Mill Road in  
9 South Silver Spring, an abandonment that I now deeply regret. If I could take back a  
10 vote, that's the one I would take back. And what happens here frequently is we have  
11 long-term development plans and the developer and the County are aware of what  
12 might occur and how it might occur, but affected businesses and residents and  
13 neighbors aren't focused until the construction begins and by then, the decision to  
14 abandon the road long occurred. So I appreciate Ms. Floreen's question about will the  
15 new segment of road be open before the old segment of road is closed? But I think we  
16 also need to be aware of impacts of construction there in Bethesda Row, which is a very  
17 successful, active heavily trafficked part of Bethesda, and are we really thinking through  
18 ahead of time issues of traffic flow, pedestrian access, sidewalks. I've seen -- it is so  
19 vivid in my mind the intersection of Blair Mill Road, where Blair Mill Road creates a  
20 triangle between East West Highway and Georgia Avenue and South Silver Spring, it's  
21 a disaster It's been an unmitigated failure. I can't speak strongly enough about the  
22 terrible lack of foresight on the County's part and the efforts to make up time now by the  
23 developer, who has begun to be considerate, I will give credit, but who started out  
24 rankly inconsiderate. And I guess with respect to Bethesda Row, we would hate to have  
25 the construction of the new project on Lot 31 create similar problems for businesses and  
26 residents. Can I get a comment? I'm not casting blame on anyone planning Lot 31  
27 because of the horrible experience in South Silver Spring, but I just think it's a real  
28 cautionary tale.

29  
30 Mike Cassedy,

31 Mr. Leventhal, during the public hearing on this abandonment case, the representatives  
32 for the developer were there and spoke at length things they're doing to mitigate  
33 anything like that. The aerial that I brought -- and I can bring it up to you to show you --  
34 when the construction begins, it is not going to interfere with Bethesda Avenue. Rather  
35 from Bethesda Avenue to the southeast to Miller Avenue -- and yes, there will be  
36 disruption of traffic there. Obviously Woodmont Avenue is not going to be passable in  
37 that area during the time of the construction. And it's my understanding that traffic will  
38 be diverted. Those coming south on Woodmont will go east on Bethesda Avenue and  
39 pick up Wisconsin, if indeed that's what they want to do. The section of Woodmont  
40 Avenue that is -- runs right up front from Wisconsin to Miller Avenue, That's going to  
41 remain open. Access to the Sacks subdivision will be maintained there and sidewalks  
42 from the Sacks community, covered for protection, are going to be provided by the  
43 developer during construction. Does that help?



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1 Council President Leventhal,  
2 Ms. Praisner?

3  
4 Councilmember Praisner,  
5 Well, the issue is, and I think Mr. Leventhal has raised the concern about it may sound  
6 good, but then we've had experiences that are not necessarily as good. And my  
7 comment actually -- I put my light on -- I've have seen abandonments where we have a  
8 paper road and a property owner nearby wants to acquire the property and it's an area  
9 that will never be built, and so we go through the process of abandonment, but we're  
10 also getting, it seems to me, a little more complicated abandonments, some of which  
11 are tied in with local map amendments and a variety of other -- or plans that still need to  
12 be approved by the Planning Board, et cetera. And it raises an issue of the sequence  
13 and the timing of Council action, as well as the issues that the Council President has  
14 raised related to impacts on folks nearby. And I know we've put these things on Consent  
15 Calendars and not sent them to the Committee when there have been -- because there  
16 has been no opposition, but I do think, and I would respectfully request, that maybe we  
17 might look at this issue in the future from a broader sense of public policy issues, either  
18 still outstanding, and the complexities of some of these that might require or suggest a  
19 discussion of sequence of when the abandonment comes to the Council in relationship  
20 to land use issues and also whether a Committee conversation on these issues might  
21 be a good idea. So that was the reason why I put my light on, Mr. President.

22  
23 Council President Leventhal,  
24 I really do appreciate the Committee Chair, Ms. Floreen, highlighting this. Since it was a  
25 Consent Calendar item, I had not focused on it. And we didn't -- this didn't come before  
26 T&E, is that correct?

27  
28 Glenn Orlin,  
29 That's right. The Committee's procedure, as Ms. Praisner pointed out, for actually the  
30 last 12 years is that unless there is an abandonment that has any opposition from  
31 anyone, even from Council staff -- or not even opposition, a comment -- that it would  
32 come to the Committee.

33  
34 [LAUGHING]

35  
36 Councilmember Praisner,  
37 Unless Councilmembers had objections, that didn't matter.

38  
39 Glenn Orlin,  
40 Well, this is why we're here today, is because, in fact, there were issues from  
41 Councilmembers. But bottom line is that is why it didn't go to the Committee.

42  
43 Council President Leventhal,



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1 I noticed that Mr. Dalrymple is here and that he and his colleague, Ms. Martin, on behalf  
2 of their firm, have signed some material here. I wonder if we might get Ms. Martin, in her  
3 role as Chair of the Bethesda/Chevy Chase Chamber of Commerce, to provide us with  
4 some advice as to whether the Chamber has -- I know she's not here but her colleague  
5 Mr. Dalrymple is here. I wonder whether we might not just ask the Chamber to take a  
6 look at this because I just think -- my only point is we need to learn from the experience  
7 in South Silver Spring. We did not think through the consequences of that road  
8 abandonment for the businesses. Now South Silver Spring is an area for which we have  
9 great hope. It is not a thriving, booming center of activity. Bethesda Row is the most  
10 successful commercial corridor in Montgomery County, and if we make similar  
11 mistakes, with respect to pedestrian and vehicle access in Bethesda Row, the  
12 consequences could be enormously serious. They were very serious at the triangle of  
13 Georgia and East West and Blair Mill Road. Bethesda Row, if we mess that one up,  
14 boy, we would really be sorry.

15  
16 Bob Dalrymple,

17 Good morning. I'm Bob Dalrymple, not Anne Martin, but I think I can speak for her. We  
18 have not only thought this through, but we're thinking it through and we'll continue to  
19 think it through. And there's been a tremendous amount of community, Chamber,  
20 business involvement in this process. Ms. Praisner, this is not tied to the local map  
21 amendment. This is an abandonment petition that would become effective at the time of  
22 record plat, should everything come together on this particular project. And there will be  
23 plans for road closure. There is already, through the Chamber and through Bethesda  
24 Urban Partnership, efforts to establish working committees with various representatives  
25 of the neighborhood and the business community to try to make the inconvenience as  
26 little as possible. There will certainly be some inconveniences. It is a complex structure.  
27 The new road will essentially be a bridge over a county parking garage, so there will be  
28 a period of inconvenience for everybody, but in the end, we think it's going to be a better  
29 Bethesda as a result of it.

30  
31 Council President Leventhal,  
32 Mr. Silverman.

33  
34 Councilmember Silverman,

35 Thanks. Just in terms of clarification, I share George's view. We were all sort of involved  
36 after the fact in trying to ensure some access in South Silver Spring. But correct if I'm  
37 wrong, the driving force behind this, even though there happens to be a development  
38 project, the driving force is 1,270 parking spaces.

39  
40 Edgar Gonzalez,

41 In this case. In this specific case.

42  
43 Councilmember Silverman,



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1 Right. And so from an inconvenience standpoint to the community and the businesses  
2 there, I would assume that even if we were just doing a parking garage, forget about  
3 there being any tie in development, that there would be extraordinary inconveniences  
4 with regard to Woodmont Avenue.

5  
6 Edgar Gonzalez,  
7 Well, I wouldn't call it extraordinary, but inconvenience.

8  
9 Councilmember Silverman,  
10 Because you don't have a business down there. Where do you go to the movies,  
11 Edgar?

12  
13 Edgar Gonzalez,  
14 All over.

15  
16 Councilmember Silverman,  
17 I guess all I'm raising is the fact that we're here in the context of a road abandonment,  
18 but this doesn't -- this isn't, to me, doesn't strike me as a situation where he you've got  
19 well, we're either going to do a project -- either there's going to be a project and there  
20 will have to be this inconvenience or nothing will happen. At some point, our public  
21 policy interest is to create a parking garage there, and the issues and the challenges for  
22 the community and the businesses in that Woodmont area, Bethesda Row area, would  
23 be pretty -- I would respectfully suggest, at least somewhat significant. Maybe not  
24 extraordinary, regardless of whether we were here for abandonment.

25  
26 Edgar Gonzalez,  
27 Yes. The other thing is that the next [step] is going to go through a subdivision process  
28 at Park and Planning and a lot of these issues are discussed in thorough detail at that  
29 stage. And because it is also a component of public involvement for the public garage,  
30 we will also have to go through Mandatory Referral. So there will be ample opportunity  
31 for the community, for the business, they are already involved and there will continue to  
32 be involvement. So all of these issues will be addressed at that time. But there is a good  
33 point about what the sequencing should be and, you know, we need to discuss that in  
34 the future.

35  
36 Council President Leventhal,  
37 Chairwoman Floreen.

38  
39 Councilmember Floreen,  
40 Thank you. Mr. Gonzalez, the garage will be a public/private garage?

41  
42 Edgar Gonzalez,  
43 It is, yeah.



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1 Councilmember Floreen,  
2 A portion of it it will be -- it will be replacing the parking places?  
3  
4 Edgar Gonzalez,  
5 And more.  
6  
7 Councilmember Floreen,  
8 And adding how many more?  
9  
10 Edgar Gonzalez,  
11 You said 1,270?  
12  
13 Bob Dalrymple,  
14 It will actually be more than that. It's 1,270 public spaces and then about 300 private  
15 spaces.  
16  
17 Councilmember Floreen,  
18 So it would be adding over and above what you have now is...?  
19  
20 Edgar Gonzalez,  
21 About a thousand.  
22  
23 Councilmember Floreen,  
24 About a thousand additional parking spaces.  
25  
26 Edgar Gonzalez,  
27 Additional parking spaces.  
28  
29 Councilmember Floreen,  
30 Okay. How long do you expect that Woodmont will need to be closed? That the torture  
31 will continue?  
32  
33 Edgar Gonzalez,  
34 Two years?  
35  
36 Councilmember Floreen,  
37 Two years. So basically you'll be constructing the garage and then putting the road back  
38 on top. Is that the idea?  
39  
40 Bob Dalrymple,  
41 That's correct.  
42  
43 Councilmember Floreen,  
44 Okay. Thank you.



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Glenn Orlin,

And as with other garages built on top of parking spaces, of course there will be fewer spaces during construction. That will be the largest impact probably on downtown Bethesda, is the fact they'll be losing Lot 31 during construction.

Bob Dalrymple,

The other point, Ms. Floreen, is that as a further concession to the surrounding community, the public garage is going to be ventilated through the roof of an Air Rights building, so you actually have to get quite a bit of structure in there before everything can open back up. But the commitment is to try to get the road and the garage open as quickly as possible, while the rest of the Air Rights Project would be proceeding.

Council President Leventhal,

Well, I have to say I suspect that the fact that there's no opposition is the fact that there has not been a lot of public information. And of course we've made a decision about the development of Lot 31, and there are many benefits that will accrue, both in terms of parking and in terms of affordable housing, but again, from the experience of the triangle at South Silver Spring, I would hope that the movie theater, all the restaurants, the Honda dealer, all of the business that are there are amply and thoroughly informed and that their customers are informed months ahead of time, that there is written information posted in the shops, you know, be aware that this is going to happen on this date, we expect it will take this long. Let the customers know that this is going on well, well in advance. Let's really learn from the experience of South Silver Spring, which was a debacle. Ms. Praisner, do you have further comments?

Councilmember Praisner,

I just wanted to comment to Mr. Dalrymple's point, I appreciate the comment you make about the redevelopment and the zoning application issues, but the packet makes reference to it. Your packet makes reference to it. And that's why my point is I think when the Council is considering abandonments or any kind of action, as we have with Affirmations of Certification of saying okay, when some nonprofit wants to apply for funding at the state and we have to say it's okay, if there is some kind of land issue associated with it, we hold off. I just think when there is some reference in a packet to a local map amendment or some kind of issue, we need to have in the packet a reference to the status of that and a consideration of the sequence of when these things are dealt with.

Bob Dalrymple,

I agree with that. We struggled with that ourselves in terms of how to keep the integrity of each of the public records intact and yet to avoid the linkage of them per se. And, you know, it's especially difficult when you have these things on agendas at the same time, which is what occurred at the Park and Planning, and yet each one had to be taken up independent of the other.



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1  
2 Council President Leventhal,  
3 Ms. Floreen, is it your pleasure to go ahead and vote on this now or do you feel we  
4 need further information? Do you want to defer a vote until September?

5  
6 Councilmember Floreen,  
7 Well, I appreciate the inquiry. I had thought about that when I realized that this was on  
8 our agenda. but I think -- I don't think we're going to get anymore information than what  
9 we've received now. And I'm prepared to support this. I think we've offered our  
10 cautionary tale to everyone and made it clear that we're going to expect extraordinary  
11 attention to how this is going to work in sorting out the public notice and the details. And  
12 how I am going to get to the movies is a matter of major concern to me, of course, as  
13 well as...

14  
15 Council President Leventhal,  
16 Right. Not a trivial point. No, I mean, I'm not joking.

17  
18 Councilmember Floreen,  
19 Access to all the vibrant elements of this part of Bethesda. At the end, it's going to be an  
20 important benefit with a thousand extra spaces, that's the message that will need to be  
21 communicated to community members down there. But with this understanding, I would  
22 go ahead and move approval.

23  
24 Council President Leventhal,  
25 Okay, I'll second that, but I'd like to offer an amendment on Circle 4, Items 3, I'd like to  
26 add subparagraphs F and G. And the gist of them -- I mean, I'm composing them out of  
27 my head so we can ask staff to write them out -- but Item F should be that there is  
28 ample signage and careful thought to to the detour -- help me write the language, but  
29 the idea would be that the detour is clearly marked, that it is clearly marked at least six  
30 months ahead of time, that drivers throughout the area are fully notified, and that great  
31 thought is given to making the detour as easy and functional as possible. That would be  
32 Item F. Item G would be that the County shall provide ample public notice through the  
33 merchants in the area. We don't need to mention them specifically, but let the legislative  
34 record state that I'm thinking about Barnes & Noble, I'm thinking about the Honda  
35 dealer, I'm thinking about the movie theater, I'm thinking about the restaurants, and that  
36 written material is provided by the County to be posted in the windows of these  
37 establishments and flyers should be provided to customers several months ahead of  
38 time.

39  
40 Councilmember Silverman,  
41 You'll go onto another page then.

42  
43 Council President Leventhal,  
44 No, these are the things that would have helped in South Silver Spring.



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1  
2 Councilmember Floreen,  
3 May I make a suggestion, Mr. President? Perhaps we could ask that DPWT bring back  
4 to us a plan of public notification, rather than devising it on the spot?

5  
6 Council President Leventhal,  
7 That's fine, we don't need all the verbiage, but Item F has to do with cars and the  
8 detour, Item G has to do with public notice and the merchants.

9  
10 Councilmember Floreen,  
11 And if you could bring that back to us.

12  
13 Council President Leventhal,  
14 And if we could add those conditions.

15  
16 Edgar Gonzalez,  
17 And we can request that; we cannot force private sector to do it, but we will provide it  
18 and will give them the opportunity..

19  
20 Council President Leventhal,  
21 Understood. I don't mean to get into more detail than is necessary. I just want to add  
22 those two conditions on the abandonment, if I could get a second for that amendment.

23  
24 Councilmember Floreen,  
25 I'll certainly accept it, with the expectation that the details of that will be brought back to  
26 us, rather than the six months and the...

27  
28 Council President Leventhal,  
29 No, that's fine. I understand. We don't need to get into that level of detail, but Items F  
30 and G would be added as conditions of the abandonment.

31  
32 Councilmember Floreen,  
33 Sure. Sure.

34  
35 Council President Leventhal,  
36 Okay? All right, those in favor will signify by raising their hands. It is unanimous among  
37 those present. Okay. that concludes item 2BB. We now turn -- where are we? We now  
38 go into District Council Session. We have before us Introduction of Zoning Text  
39 Amendment 06-23. Mr. Knapp has asked to be added as a cosponsor of ZTA 06-23. Mr.  
40 Silverman?

41  
42 Councilmember Silverman,  
43 Yes, well, I'm a strong supporter of large signs, so I'd love to be added as a cosponsor.



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1 Council President Leventhal,  
2 Without objection, we will also add Mr. Silverman to ZTA 06-23. Let me just very quickly  
3 thank Jeff Zyontz for his assistance in drafting this ZTA. What this does is responds to  
4 some of the concerns that the Council heard at the Town Hall meeting for clergy that we  
5 put on in late June. A number of churches expressed concern over their interaction with  
6 County government restricting their ability to communicate with congregants, especially  
7 in residential zones. I do want to ask Mr. Zyontz when this comes up in the PHED  
8 Committee if we could please look at the issue of whether the signs need to be firmly  
9 fixed. That was another issue that, as I read the ZTA, it does not address. Some of the  
10 churches had wanted to put up banners and they were told they couldn't because it  
11 wasn't, you know, permanently fixed on to a wood or other structure. That's something  
12 we should also take a look at when it comes up in committee. And so we need a  
13 resolution to establish a public hearing on September 21st. I will move that. Mr. Knapp  
14 will second it. And Ms. Floreen, you wanted to comment on the introduction of the bill?  
15 On the ZTA?

16  
17 Councilmember Floreen,  
18 Mr. President, I noticed that the notice for this, the definition of this, the purpose cause  
19 makes it very clear that the total square footage of signs could only be 50 square feet.  
20 And it occurs to me that there might be occasions -- that means everything on site.  
21 Every conceivable sign that they might have. And I am wondering if you might want to  
22 make that a little less specific in case in committee that got changed.

23  
24 Council President Leventhal,  
25 Good. You mean there might be more than one large sign on a church property?

26  
27 Councilmember Floreen,  
28 That is correct. Or it says cumulative number of signs, as I understand it.

29  
30 Council President Leventhal,  
31 Good. So we'll make a note of that and the Committee will discuss that, as well. Very  
32 helpful point, Ms. Floreen. Thank you. Okay, those in favor of establishing a public  
33 hearing on the signs ZTA on September 21st will signify by raising their hands. The  
34 public hearing will be established. Next, we have action on ZTA 06-19, Florist - Office -  
35 Moderate Density. The PHED Committee recommends approval. Chairman Silverman?

36  
37 Councilmember Silverman,  
38 Yes. {LAUGHING} Everything's coming up roses. All right, we recommended  
39 unanimously approval of Zoning Text --.

40  
41 Unidentified Speaker,  
42 [INAUDIBLE]

43  
44 Councilmember Silverman,



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1 I'm just following your lead, Mr. Quipster. Approval of Zoning Text Amendment 06-19.  
2 This is a opportunity -- limited opportunity for a florist consistent with purposes of the  
3 OM Zone. There are certain retail sites -- retail uses that can be done -- permitted in an  
4 OM Zone, a florist is not one. And the sponsors of the legislation made a convincing  
5 case that florists should be added to the list of the non-office uses permitted in the OM  
6 Zone, which are contained on page two, which include beauty shops, barbers,  
7 newsstands, duplicating services, eating and drinking establishments, and antique  
8 stops. So we're pro-flower this morning. Thank you.

9  
10 Council President Leventhal,  
11 Okay. No further comments on ZTA 06-19. The clerk will call the role.

12  
13 Council Clerk,  
14 Mr. Denis?

15  
16 Councilmember Denis,  
17 Yes.

18  
19 Council Clerk,  
20 Ms. Floreen?

21  
22 Councilmember Floreen,  
23 Yes.

24  
25 Council Clerk,  
26 Mr. Silverman?

27  
28 Councilmember Silverman,  
29 Yes.

30  
31 Council Clerk,  
32 Mr. Knapp?

33  
34 Councilmember Knapp,  
35 Yes.

36  
37 Council Clerk,  
38 Mr. Andrews?

39  
40 Councilmember Andrews,  
41 Yes.

42  
43 Council Clerk,  
44 Ms. Praisner?



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1  
2 Councilmember Praisner,  
3 Yes.

4  
5 Council Clerk,  
6 Mr. Leventhal?

7  
8 Council President Leventhal,  
9 Yes. I want to congratulate Mr. Silverman on his flowery rhetoric this morning.

10  
11 [LAUGHTER]

12  
13 Councilmember Silverman,  
14 Hey, it's the last day of school, guys. Come on.

15  
16 Council President Leventhal,  
17 Apparently.

18  
19 Councilmember Praisner,  
20 Do we get a test on the last day of school?

21  
22 Council President Leventhal,  
23 Local Map Amendment G-840 is now before the Council. Mr. Grossman.

24  
25 Marty Grossman,  
26 Good morning, Mr. President.

27  
28 Council President Leventhal,  
29 Good morning.

30  
31 Marty Grossman,  
32 G-840 is relatively straightforward, an application to -- for a Local Map Amendment to  
33 rezone an R-90/TDR5 zone to the RT-10 zone -- that's residential townhouse with a  
34 maximum of 10 units per acre -- located at Washington Grove Lane and Mid-County  
35 Highway. There were a few issues regarding this. The most important in my mind was a  
36 compatibility issue with the lovely neighborhood along Woodward's Store Road. The  
37 concerns of the neighbors who testified at the hearing I think were largely alleviated by  
38 the willingness of the applicant to avoid entryway on Woodward's Store Road if the Fire  
39 Department permits avoiding that entrance. The actual entrance to the planned  
40 development for 32 townhouse units would be on Washington Grove Lane. And to avoid  
41 any improvements, in quotes, on Woodward's Store Road, because that would remove  
42 the trees and so on. If you look in my report, I think you'll see pictures of Woodward's  
43 Store Road, which give you some idea of that area. The other issues dealt with noise  
44 from Midcounty Highway, which were largely dealt with by expert testimony, and I'm



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1 convinced that, in fact, the noise issues can be dealt with with a noise wall and  
2 appropriate acoustical building materials. The third issue was the question of whether --  
3 the fact that the Master Plan does not specifically recommend this requested zone and I  
4 felt, as did technical staff in the Planning Board, that the Master Plan recommendation  
5 for the R-90/TDR5 zone has been superseded by the development in the area, which  
6 now has many townhouse developments around the area and others that make this  
7 particular proposal equivalent density with what's around the area. So I recommend  
8 approval, as I did in my report, of this rezoning request.

9  
10 Council President Leventhal,  
11 Okay, just a question. Does this remove then another TDR receiving area from our  
12 map?

13  
14 Marty Grossman,  
15 It would remove in this particular three-acre area. The problem is that because when the  
16 Master Plan devised that TDR5 for the area, it was an eight-acre tract and it might may  
17 have made sense, in terms of development. When it was reduced by the creation of  
18 Midcounty Highway to a 3.2-acre tract, it no longer provides a realistic addition of  
19 development density on that area. And so this conversion to this particular zone, to the  
20 RT-10 zone would allow up to 32 townhouse units, whereas as the TDR zone would  
21 allow only 15 units there. So, it was not...

22  
23 Council President Leventhal,  
24 But cannot TDRs be redeemed for the construction of townhouses?

25  
26 Marty Grossman,  
27 They could be, but it would not increase -- given the small acreage, it would not  
28 increase the number of units, only by one, according to the testimony, and it would allow  
29 only up to 15, which is TDR5 on this three-acre plot. 3.2-acre plot. And so it was felt that  
30 the conversion to the RT-10 zone would allow up to these 32 units. It might be fewer  
31 because the Planning Board has specifically said that it is going to look very closely at  
32 compatibility with the surrounding area, but it would be up to 32 units.

33  
34 Council President Leventhal,  
35 Mr. Andrews?

36  
37 Councilmember Andrews,  
38 Thank you, Mr. President. The question I have about the proposal is what is proposed  
39 as the mitigation for noise? I am looking at Circle 54 and it indicates that the results of  
40 the polysonics analysis indicate unless mitigated by some measure, the future traffic of  
41 Midcounty Highway will create ground noise levels exceeding 65-decibels in the rear  
42 yards of lots 4 through 8 and 15 through 20. And in order to achieve the acceptable  
43 noise levels, a series of noise barriers must be constructed And then it says the noise  
44 barriers will need to be approximately six feet in height, and goes on to say on the next



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1 page that there will be a one-inch thick board-on-board solid wood fence. And I just  
2 don't find it. I have trouble believing that that would actually mitigate the noise. We're in  
3 the process of constructing noise walls in that very area along Shady Grove Road and  
4 along portions of Midcounty Highway, and the noise walls that the County will be  
5 constructing are composite, thick, and much higher than six feet, often 12 to 16 feet.  
6 Sometimes in some places they've been higher. At least along Johnstown Road, the  
7 state noise walls are up to 20 feet in some cases. So I just find it hard to believe that a 6  
8 1/2-foot wooden fence, one inch thick, would actually work. And I have not had the  
9 chance to look at the exhibit that went into the detail, but I would say that I just have no  
10 confidence that that would work.

11  
12 Marty Grossman,

13 All right, that will be -- the question of exactly what will be used will be reviewed by the  
14 Planning Board at site plan, in this case, and technical staff so indicated in their report.  
15 The expert testimony at the hearing was that that would suffice. There has to be a  
16 distinction made between the noise in the back yards in those homes that would be right  
17 near the highway and the noise in the upper levels. The expert testified that the noise  
18 barrier would not be something that would be applied to the upper levels in these  
19 houses. That wall would not suffice for that, and that it would be acoustical building  
20 materials that would reduce the noise levels within the upper levels to the acceptable  
21 County level. And this is all based on a set of standards developed-- that technical staff  
22 had put out a number of years ago, which I referenced in my report. So it's a legitimate  
23 concern certainly, but the particulars of what the noise wall would have to be  
24 constructed of would have to be determined by Planning Board at site plan. I can only  
25 go by what the records says. The expert testimony said it would suffice to have this wall,  
26 which would range between six and seven feet. There's going to be a berm, to some  
27 extent, on which the wall would sit in some areas, because in some areas, it would have  
28 to be a bit higher than six feet, but that's the general run of it. It would be about 6 1/2  
29 feet and as I said, the record expert testimony is that it would suffice for the back yard  
30 noise of the concerned units.

31  
32 Councilmember Andrews,

33 I understand that you need to go on what is in the record in your recommendation. I'm  
34 just uncomfortable approving a recommendation that suggests that that's adequate or  
35 that relies on that expert testimony, which I don't find credible. And I -- that's my strong  
36 belief based on my experience. Just with the noise in that area and what has been  
37 proposed to address it. that that won't get the job done. And whatever might occur at the  
38 Planning Board, I don't think that this strengthens the likelihood that there will be  
39 adequate noise mitigation provided.

40  
41 Marty Grossman,

42 I think that actually I believe there's something in the proposed resolution that would  
43 indicate there was supposed to be Planning Board attention to that noise issue.  
44



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1 Councilmember Andrews,

2 I think what -- here's my concern, as well. I think what my fear is that what would  
3 happen is that what would end up being placed there would be inadequate and that we  
4 would then have a request from the community to add the noise walls similar to what we  
5 are putting in down the street that would cost hundreds of thousands of dollars to put in  
6 and that the taxpayers would then pick up. And that's where I see this heading at this  
7 point.

8  
9 Marty Grossman,

10 I understand the concerns. If I may have a moment, let me just see if I can find what I  
11 was...

12  
13 Council President Leventhal,  
14 Ms. Praisner.

15  
16 Councilmember Praisner,

17 Yes, I wanted to make a couple of comments and I had issues associated with Mr.  
18 Andrews, as well. Two points. One, just in technical comments, Mr. Grossman. On  
19 Circle 28, we have again, the chart that comes from the Planning Board and from the  
20 applicant, I believe, that sets for the summary of the standards being met, water-binding  
21 elements, what's proposed and what's required or permitted. It uses the old Park and  
22 Planning chart, I believe, that says required/permitted.

23  
24 Marty Grossman,  
25 Yes.

26  
27 Councilmember Praisner,

28 I had requested it the last time that we had a rezoning in front of us that that chart -- or  
29 the use of that -- the continued use of that chart raises, in my view, significant questions  
30 as to what's required and what's permitted, because those are two different standards  
31 obviously. And I was urging that the Planning Board in the future and any application  
32 that come to us be more explicit about the difference between what's required and  
33 what's permitted. I don't know if -- and we may want to explore the issue of how that is  
34 presented in the future. Just as a comment.

35  
36 Marty Grossman,

37 [INAUDIBLE] mentioned that concern and I will certainly address that -- .

38  
39 Councilmember Praisner,

40 Well, it's also for the Planning Board and for applicants. It's not for the Hearing  
41 Examiner and I think, you know, it was submitted to you. The point is when they submit  
42 something, it should be more-- it should clarify those kinds of requirements. I think the  
43 issues of specimen trees, stormwater, and noise are very specific issues that need to be  
44 considered both the Council and by the Planning Board. The other issue, of course, is



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1 consistent with the last one where we had a rezoning, and that is the loss of TDRs. I  
2 think this packet more explicitly discusses why the lack of TDRs is probably reasonable.  
3 I don't necessarily believe that we've seen that in other applications where we lose  
4 TDRs and I would just like to suggest, separate from this application, that we have a  
5 conversation about how many TDRs we're losing through rezoning, and where it's been  
6 an incremental rezoning or a change that makes TDRs not a viable option. Obviously,  
7 having TDRs in the Master Plan applied to a specific site does not guarantee that they  
8 will be used, nor does it guarantee they're viable, especially when you've incrementally  
9 chopped away at the site. But that is not always the case and I think it is important for  
10 the Council to think about the issue and in a broad sense, not to deal with it site by site  
11 or application by application. So I would ask staff and the Planning Board staff to think  
12 about how we might look at this in another context. I am troubled by the noise issue and  
13 I am not sure that in this document, we have the context that allows us to either be  
14 comfortable. And I share Mr. Andrews' concern that the noise issue will leave us having  
15 to foot the bill if things are not -- elements are not satisfied through the construction  
16 process. And I wondered whether -- it seems to to me there are two options. One, that  
17 the Council can make a proviso, I guess, that this is approved, providing the standards  
18 for noise mitigation are consistent with what we're doing in that area or we can remand  
19 to require that that be incorporated, or we can send a message to the Planning Board.  
20 I'm not sure legally which is the most appropriate way to go, and I actually am asking  
21 you and Council staff to provide advice to me at this point before I make any motions.

22  
23 Marty Grossman,

24 Well, if you'll turn to Circle 6, which is page 6 of the proposed resolution, I did include a  
25 sentence in the first paragraph, the penultimate sentence says, "However, the Planning  
26 Board should certainly look into this issue," that being the noise question, "at site plan  
27 review to assure that appropriate sound mitigation measures are taken. The technical  
28 staff report indicates that steps to deal with the noise problem will be considered at that  
29 time." So I do have a sentence in the resolution proposed by the Council, which in fact  
30 instructs the Planning Board to look into that issue.

31  
32 Councilmember Praisner,

33 Well, can we modify that to suggest that the site plan review assure that sound  
34 mitigation measures consistent with County policy are taken, such that it is a little  
35 clearer that it is consistent with what we do in those areas? So -- the definition of  
36 appropriate, it seems to me, needs to be consistent with our policy, you know, in that  
37 general area so that...

38  
39 Marty Grossman,

40 I'll be happy to include a sentence to that effect right in that area.

41  
42 Councilmember Praisner,

43 With that amendment, I would move approval with that amendment.



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1 Councilmember Floreen,  
2 Second.

3  
4 Council President Leventhal,  
5 Ms. Praisner moved and Ms. Floreen has seconded approval of the Hearing Examiner's  
6 report as amended. If there are no further comments, those in favor will signify by  
7 raising -- oh, it's a roll call. Pardon me. The clerk will call the roll.

8  
9 Council Clerk,  
10 Mr. Denis.

11  
12 Councilmember Denis,  
13 Yes.

14  
15 Council Clerk,  
16 Ms. Floreen.

17  
18 Councilmember Floreen,  
19 Yes.

20  
21 Council Clerk,  
22 Mr. Silverman.

23  
24 Councilmember Silverman,  
25 Yes.

26  
27 Council Clerk,  
28 Mr. Knapp.

29  
30 Councilmember Knapp,  
31 Yes.

32  
33 Council Clerk,  
34 Mr. Andrews.

35  
36 Councilmember Andrews,  
37 Yes.

38  
39 Council Clerk,  
40 Ms. Praisner.

41  
42 Councilmember Praisner,  
43 Yes.



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1 Council Clerk,  
2 Mr. Leventhal.

3  
4 Council President Leventhal,  
5 Yes. The Hearing Examiner's report is approved. We now have a request for oral  
6 argument regarding applications G-842 and DPA 06-2. Mr. Grossman, is this you  
7 again?

8  
9 Marty Grossman,  
10 Yes, it is, Mr. President.

11  
12 Council President Leventhal,  
13 All right.

14  
15 Marty Grossman,  
16 This is a complicated application because it's a combination of Local Map Amendment  
17 G-842 a Development Plan Amendment 06-2, an application brought by Hampton Lane  
18 Associates to rezone about a half an acre of land on Hampton Lane in Bethesda. That's  
19 lots 5, 4, 2, part of 1 in the Edgemoore subdivision, Block 24-D. from the R-60 zone to  
20 the TSR zone in order to construction a 60-unit multifamily dwelling with nine MPDUs. It  
21 also involves the DPA, which would allow the establishment of 12 transitional housing  
22 units in this area. If I may , I put a copy of the proposed DPA up on the easel because  
23 it's a little bit difficult to understand what's happening here without the diagram. The  
24 area that's going to be -- that's proposed to be involved in this whole project runs along  
25 Hampton Lane here. These five lots. Right now, lot 3 is where the proposed transitional  
26 housing was to be. Lot 3 was acquired by the County from the developers along  
27 Montgomery Lane here of the Edgemoore developments in exchange for an agreement  
28 that that would satisfy their MPDU requirements. In order to make this a viable TSR  
29 project, the applicant wanted to move the Lot 3 transitional housing project into Lot 5,  
30 with the County's agreement, and that would allow these four lots, 1, 2, 3, 4, would allow  
31 the building that they wish to construct and then the transitional housing would be  
32 constructed on Lot 5. Over here. So these are all intertwined. Right now, Lot 3 is  
33 already in the TSR zone and so it doesn't have to be rezoned, but Lot 5 would have to  
34 be rezoned to TSR in order to make this project work. There are a number of issues  
35 related to this whole development. The most significant, in my mind, was the question of  
36 whether or not the project as currently designed really carries out the vision of the  
37 sector plan. And the compatibility is the second issue, compatibility with the immediate  
38 surroundings. And I can go into that at greater length. I don't know if you wish to hear all  
39 our arguments.

40  
41 Council President Leventhal,  
42 I don't think so. I mean, the only matter before us now is simply the request for oral  
43 argument.



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1 Marty Grossman,  
2 Okay.

3  
4 Council President Leventhal,  
5 So depending on the will of the Council... Mr. Denis, I think, was going to make a  
6 motion?

7  
8 Councilmember Denis,  
9 I'll wait.

10  
11 Marty Grossman,  
12 Yeah, the only other thing I wanted to say is there was one conflict-of-interest issue  
13 raised also in this case. That's the third issue which should be considered by the  
14 Council and I will be happy to expand on any of that as the Council wishes. The conflict-  
15 of-interest issue arises because the zoning ordinance requires, in this type of case,  
16 where there is a request to increase density and height and this zone, that they be  
17 reviewed by the Alternative Review Committee. And the Alternative Review Committee,  
18 also abbreviated ARC, is composed of three statutorily required members, including the  
19 head of DCHA and HOC. It so happens, in this particular case, that those two members  
20 were also signatories to the agreement with the developer to facilitate the development.  
21 So it created a direct issue of conflict. I'm sitting on the ARC Committee to review the  
22 question of whether or not the density -- increased density in height was financially  
23 necessary to make this project viable. That issue was raised at the hearing. I have  
24 discussed it in my report. There was -- Ms. Davidson did ask the County Attorney for an  
25 opinion. As I understand it, there was an oral okay given by the County Attorney to her  
26 because she didn't have a direct financial interest in this. I didn't view it in terms of her  
27 personal financial interest; I viewed it in terms of the more global conflict question. I did  
28 a little research and found an opinion of the Attorney General of Maryland that dealt with  
29 this very same issue regarding the Montgomery County Liquor Board, and they applied  
30 the Rule of Necessity, which is a doctrine that if, in fact, it's critical that you have the  
31 vote and too many people are conflicted, to allow the vote. Then nobody is, in effect,  
32 conflicted and they may vote. This -- and I report in my report this opinion of the  
33 Attorney General on this point. It's opinion number 01-004. I found that that applies  
34 directly here under the circumstances. Those are the three issues that I saw here.

35  
36 Council President Leventhal,  
37 Mr. Denis, did you have a motion?

38  
39 Councilmember Denis,  
40 Thank you, Mr. President. I would move for oral argument at an appropriate time. I think  
41 the custom is ten minutes for and ten minutes against. Is it 20 and 20?

42  
43 Marty Grossman,  
44 20 for and 20 against.



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1  
2 Councilmember Denis,  
3 20 and 20? 20 and 20? Okay, 20/20.

4  
5 Council President Leventhal,  
6 Okay, Ms. Praisner?

7  
8 Councilmember Praisner,  
9 I'll second that motion, but I think we need to be clear what the oral argument is about,  
10 so I guess Mr. Denis, you're asking for an oral argument on all three points?

11  
12 Councilmember Denis,  
13 Yes, I am.

14  
15 Council President Leventhal,  
16 All right, the motion is for oral arguments. Those in favor of allowing oral argument, will  
17 signify by raising their hands. It is unanimous among those present.

18  
19 Marty Grossman,  
20 Now you have a matter of necessity, you have to extend the time for the Council to act.

21  
22 Council President Leventhal,  
23 Okay, can we get a motion, Mr. Denis?

24  
25 Councilmember Denis,  
26 I'll so move.

27  
28 Councilmember Praisner,  
29 Second.

30  
31 Council President Leventhal,  
32 Mr. Denis has moved and Ms. Praisner has seconded a resolution to extend time for  
33 Council action on this matter until October 31st. Those in favor of extending the time will  
34 signify by raising their hands. It is unanimous among those present. Okay, thank you,  
35 Mr. Grossman and Mr. Zyontz.

36  
37 Marty Grossman,  
38 Thank you, Mr. President.

39  
40 Council President Leventhal,  
41 We're now back in legislative session. Is there a Legislative Journal for approval?

42  
43 Council Clerk,  
44 You have the Journal of July 18th for approval.



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Councilmember Andrews,  
Move approval.

Council President Leventhal,  
Mr. Andrews has moved and Mr. Perez has seconded approval of the Legislative Journal for July 18th. Those in favor will signify by raising their hands. It is approved unanimously among those present. We have introduction of bills, Bill 36-06 to create a Forest Preservation Advisory Committee. A public hearing is scheduled for September 19th at 1:30 PM. Without objection, the bill is introduced. We have Bill 37-06, Property Tax Credit - Green Buildings, sponsored by Councilmembers Floreen, Subin, Denis and Knapp. Ms. Floreen.

Councilmember Floreen,  
Thank you, Mr. President. I just wanted to comment I think that anyone who's contemplating construction of a building this summer should think really hard about building green for their sake and the sake of the environment, and I think that knowing that a credit might be available might help folks go green sooner rather than later. The idea here is to complement the work that Council President Leventhal has done on the Green Buildings Initiative to make available a benefit as well as a challenge. And I just note that this is a product of authority granted to us through state legislation in 2004. Baltimore County has just taken advantage of that and passed a similar bill this June. Clearly, sustainability is the key for our County's future. In the time of global warming, high fuel costs, and throw-away mindset, a need for serious energy efficiency, use of environmentally sensitive materials, and the economies and space are more critical than ever. While we know that going green will increase construction costs, it will be a savings in the future. So my hope here is that the possibility of a tax credit will motivate folks to do the research, find the right materials, and spend the money up front. This should be a win/win proposal for them and for us. Thanks.

Council President Leventhal,  
Okay, thank you, Ms. Floreen. Let me be clear I have been working on a green buildings proposal since last November. I've been working with the Council staff. I am well aware that state law enables this body to grant a property tax credit for buildings that qualify as LEED Silver. I've introduced a proposal that is pending in the T&E Committee that I hope we can bring up promptly in your Committee, Madam Chair. It does not preclude, and in fact, I have anticipated that in our action on that legislation, we would indeed take advantage of the power given us by the state legislature and we would act on a property tax credit for buildings that achieve LEED Silver as the state legislature has empowered us to do. I appreciated your offer to me that I cosponsor your bill. I have declined to do so. My concern about this bill is that it creates the potential for Councilmembers to vote only for this bill and not for an across-the-board requirement that all new construction meet a minimum green building standard. In so doing, Councilmembers could claim that they had voted for a green buildings bill and



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1 not indeed imposed any green building requirement at all on the private sector. This  
2 simply allows those builders who already have decided to achieve LEED Silver to  
3 achieve a property tax credit for doing so. It does provide an incentive. I support the  
4 concept, but I support it in the context of an overall effort on the part of the Planning  
5 Board and DPS to become more familiar with LEED to make sure that all builders in the  
6 county are more familiar with LEED, not just those that are already inclined to build to  
7 LEED standards. So I'm looking forward to the conversation. I hope we can promptly  
8 schedule my green buildings bill, as well as any other green buildings legislation that  
9 any other Councilmembers may want to bring forward in the T&E Committee. And this is  
10 a high priority for me for legislative action this fall. Mr. Perez.

11  
12 Councilmember Perez,

13 Thank you. First of all, I apologize for my delay. I had an early-morning meeting in  
14 Baltimore, I left a little after 9:00 and had an hour and 50 minute commute over here  
15 because of some I-95 traffic.

16  
17 Councilmember Silverman,  
18 Change your view on the ICC, Mr. Perez?

19  
20 Councilmember Perez,  
21 Oh, man. I saw a lot of...

22  
23 [LAUGHTER]

24  
25 Councilmember Perez,  
26 Well, as I saw the slick of traffic, there are a lot of billboards on 198 for a Two-County  
27 Executive. Yes, exactly. Exactly. So...

28  
29 Council President Leventhal,  
30 Those billboards are causing traffic backups.

31  
32 Councilmember Perez,  
33 That's right.

34  
35 Council President Leventhal,  
36 People are pondering who they're going to vote for and they're slowing down.

37  
38 Councilmember Perez,  
39 That's right, they're slowing down. I was actually going to comment on Agenda Item  
40 Number 8 and I wanted to, first of all, thank Councilmember Denis, Praisner and the  
41 Council President for cosponsoring this. When I did a Town Hall meeting two years ago  
42 in Silver Spring, I asked what I often ask at Town Hall meetings, which is what are the  
43 three things we can do at the County Council to address concerns in your community?  
44 And one of the issues that came up that the community has educated me a lot about in



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1 downtown Silver Spring was the issue of trees. This was pre Hurricane Isabel and we  
2 talked about the need for a much more aggressive policy and I'm glad to see my good  
3 friend -- Is that Mary Bradford? No, it's -- hey. The Department of Parks, it's good to see  
4 you here. But the issue that was raised was the fact that we have areas like Silver  
5 Spring, Bethesda, and elsewhere that have a lot of urban forestry issues. And we  
6 learned after Hurricane Isabel that we really need to do more, whether it's tree trimming,  
7 tree maintenance, tree planting, and this is a very important part of our landscape,  
8 literally and figuratively. And so with the collaboration of my colleagues on the Council,  
9 we have introduced this bill calling for the creation of this Advisory Committee. I think it  
10 will be very helpful to make sure that this issue, which is an orphan issue. Every time  
11 we're looking to cut something in the budget, you cut tree trimming and tree  
12 maintenance and you don't do anything until the hurricane comes and all the trees fall  
13 over and then you wonder why we didn't do it. And so this Advisory Committee will be  
14 the voice for what is otherwise an orphan issue, which is forest preservation and tree  
15 maintenance in the County. Thank you, Mr. President.

16  
17 Council President Leventhal,

18 Okay, without objection, Bill 37-06 is introduced, a public hearing is scheduled for  
19 September 19th. We now have a Call of Bills for Final Reading. Bill 32-05, Contracts  
20 and Procurement Service Contracts, with a favorable recommendation from the MFP  
21 Committee. Chairwoman Praisner.

22  
23 Councilmember Praisner,

24 Yes, thank you. Before I comment on this legislation, let me also comment that the  
25 Advisory Committee on forest preservation will also hopefully advise on some of the  
26 types of trees to plant. Because in some problems and situations, it's what we do that  
27 comes home or falls down later on. Bill 32-05 is legislation introduced sponsored by  
28 Councilmember Leventhal that deals with -- prospectively with contracts that the County  
29 may consider entering into with private entities for services that are currently being  
30 provided by County employees. I want to make clear that the summary of the legislation  
31 on page 1 of the packet for the MFP Committee, which I believe was in  
32 Councilmember's packets for today because we did not deal with this until yesterday,  
33 and our amendments and suggestions also are included in an addendum item, an  
34 additional packet that was given to Councilmembers late yesterday, I believe. Although  
35 the summary said "traditionally been provided," this is not a retroactive situation, so  
36 we're not talking about any activity that may have been provided in the past for which  
37 there is a contractual situation going back to whenever Montgomery County may have  
38 started delivering services. We're talking about future and existing services provided by  
39 County employees and any potential future contracting out of something which County  
40 employees currently provide. This legislation sets a savings threshold that must be met  
41 before the County government can solicit or award these contracts for services if the  
42 contract will have an adverse affect on the employees. It also requires the County  
43 departments and the CAO to take certain actions before contracting out those functions.  
44 And it requires the departments to bargain a plan of employee assistance when that



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1 group of employees would be adversely affected by the contracting-out situation. The  
2 amendments that the Committee considered yesterday and recommends approval of  
3 are basically technical and clarifying amendments. Number one is the definition of  
4 "adverse effect" and it adds to line 22 of the legislation by these following words. "By  
5 reducing or eliminating work already performed by County employees when the contract  
6 is solicited." In other words, the adverse effect on the employees has to exist and that is  
7 the reduction of the elimination of that work. The cost savings after the word "will" on  
8 line 49 as -- no, that one was not adopted by the Committee. I'm sorry. Enforcement  
9 modification on lines 77, 78, the language adds a statement "non-compliance with this  
10 Article does not invalidate a contract award or proposed contract award that the County  
11 has otherwise validly awarding or issued." In other words, that's a belts-and-suspenders  
12 language that deals with the relationship between the County and its contractor, as it  
13 relates to the awarding of contract. The next amendment deals with court jurisdiction  
14 and on line 80, after the word "County" adds "or the District Court of Maryland,  
15 depending on the amount in controversy," because not all issues depending upon the  
16 dollar threshold would go to the circuit court. It relates to District Court at certain dollar  
17 amounts. The last amendment is on lines 85 to 87 and deals with employee  
18 competition, and changes the words "a proposal," which is not the term that we use in  
19 contract relationships. It's "an offer in response to solicitation." That's the term that the  
20 County uses when we're talking about a contractual issue, and we unanimously  
21 recommend approval of that, as well. The final change, again, is this is a new  
22 experience that we will be going through, both the bargaining unit and the County  
23 government. And two things that we have changed is number one, and that relates to  
24 the date issues. The first one on line 118, obviously this was introduced last year and  
25 the question of when and the effective date dealing with new situations. Obviously we  
26 didn't want to go backwards or keep a date that related to contracts already entered into  
27 in November of 2005, so the effective date is for any service contract awarded on or  
28 after July 1st, 2007. The final -- January, I'm sorry. Did I say July? I apologize. January  
29 1st, 2007. The last changes deal with lines 111 to 119, and they deal with the fact that is  
30 a new relationship, new relationship. The Committee discussed whether we should  
31 sunset the legislation or how we should deal with this. In fact, one might have the  
32 legislation in place and never have it used. It depends upon whether a contract is  
33 considered by a department and it also depends upon the threshold levels we're talking  
34 about. And let me add there is another amendment that we considered and recommend  
35 approval of, and that relates to the dollar threshold amount, and it allows us on Circles  
36 24 through 28 relates to adjusting the amount in the paragraph related to the dollar  
37 thresholds, requires adjusting of that every two years to reflect the aggregate increase,  
38 if any, in the Consumer Price Index for all urban consumers for the Washington-  
39 Baltimore Metropolitan Area or any successor index for the previous two years and the  
40 adjustment would be calculated to the nearest multiple of \$100. And going back to the  
41 report and evaluation, as I said, we may never have this legislation used, but we wanted  
42 to have an opportunity for the next County Executive, since this will apply under the new  
43 County Executive, wanted to have an opportunity for the new Council and the new  
44 County Executive to review this proposal and to continue to have that opportunity. So



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1 the County Executive must report to the Council President not later than January 1st,  
2 2009, on the Executive Branch's experience, if any, to that point with the process  
3 required by this Article 6 of Chapter 11-B, inserted by Section 1 of this Act -- meaning  
4 this everything that we're dealing with as an amendment, as legislation -- including any  
5 savings realized or cost added and any other effect on Executive Branch performance.  
6 And by that, we include any issues or challenges to the departments associated with  
7 trying to implement the legislation, yo the extent it adds some complexities or issues  
8 that would also be brought to our attention. And we're asking the Office of Legislative  
9 Oversight to evaluate the effect of the process, including the performance of Executive  
10 Branch Departments, including those [INAUDIBLE], et cetera, by July 1st, 2009 or any  
11 later date we may consider. And with that, the Committee unanimously recommends  
12 approval.

13  
14 Council President Leventhal,  
15 Thank you. Mr. Denis, Lead Member for Personnel.

16  
17 Councilmember Denis,  
18 Thank you, Mr. President. As Lead Member for Personnel, I just want to thank the Chair  
19 for her explanation and the Committee for its support and you, President Leventhal, for  
20 sponsoring this important piece of legislation. It's been a long time coming since the last  
21 time this matter was before the Council back in '98. And of course this is based on a  
22 state law that I supported when I was in the legislature. The bill before us strikes a very  
23 moderate, balanced, reasonable approach. Other counties have gone all the way in one  
24 particular direction. Anne Arundel County and Prince George's County come to mind.  
25 So, I appreciate that this is a balanced approach and the Committee amendments, I  
26 think, strike the balance even more finely. So it's a good bill and I look forward to its  
27 passage.

28  
29 Council President Leventhal,  
30 Ms. Floreen.

31  
32 Councilmember Floreen,  
33 Thank you. I wasn't familiar with this. So I had just a couple of questions about what the  
34 Committee may have taken up. Does this apply to contracts for services with non-  
35 profits?

36  
37 Michael Faden,  
38 It could. I mean it does, yes.

39  
40 Councilmember Praisner,  
41 It doesn't apply to existing contracts?

42  
43 Michael Faden,  
44 No. New contracts after January 1st.



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1  
2 Councilmember Praisner,  
3 For services that the County employees are currently providing, not for broad contracts  
4 that might be beyond what County government provides. So for example, if we're doing  
5 something in County government and we choose to no longer do it in County  
6 government, but to contract with a non-profit or anyone else to do it, then it would apply.  
7 But it doesn't apply for contracts with non-profits where they are doing something that is  
8 beyond what -- and you also have to prove an adverse effect on the existing County  
9 employees.

10  
11 Councilmember Floreen,  
12 Who does that? Who needs to demonstrate that? Is it the County or the -- how does  
13 that get resolved?

14  
15 Councilmember Praisner,  
16 That's the CAO's determination and the Department's determination.

17  
18 Council President Leventhal,  
19 The Department of Human Resources.

20  
21 Councilmember Praisner,  
22 No, the department affected by the change.

23  
24 Council President Leventhal,  
25 Whichever department contracts out the service.

26  
27 Councilmember Praisner,  
28 Correct.

29  
30 Councilmember Floreen,  
31 It wasn't clear to me how this was going to operate. Are we all in agreement as to what  
32 service means? A service contract? Is that a term that's a known quantity?

33  
34 Michael Faden,  
35 No, it's not, but it's a fairly inclusive term. But there are some exceptions on Circle 3 of  
36 this packet for today's bill.

37  
38 Councilmember Floreen,  
39 What is not a service contract? Let me put it that way. I guess it's a contract for...

40  
41 Michael Faden,  
42 For goods.

43  
44 Councilmember Floreen,



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1 For goods.

2  
3 Michael Faden,  
4 Right, or construction.

5  
6 Councilmember Floreen,  
7 Well, that was my next question. For goods --  
8 Council President Leventhal,  
9 That's addressed on Circle 3, lines 30-39.

10  
11 Councilmember Floreen,  
12 Goods I understand. On Circle 30 through 32, it says "doesn't apply to contract to obtain  
13 goods or construction, but includes services related to the procurement of the goods or  
14 construction." So what does that mean?

15  
16 Council President Leventhal,  
17 The people that do the work, the County employees who were involved in the  
18 procurement.

19  
20 Michael Faden,  
21 Right. Or for example, inspection services, if those were outsourced. However you want  
22 to fit that in with the newer provisions. The Committee inserted another exception, which  
23 was actually recommended by the Office of Human Resources, lower down on that  
24 page starting on line 43, which exempts consultants or professional services except  
25 those already provided by bargaining unit employees when the contract when is  
26 solicited.

27  
28 Councilmember Floreen,  
29 Well, if the County, for example, is contracting to -- I guess, to have an independent  
30 contractor construct a building for us.

31  
32 Councilmember Praisner,  
33 Well, since we don't -- we don't construct any buildings that I'm aware of.

34  
35 Councilmember Floreen,  
36 Right, so that's what I'm trying to...

37  
38 Councilmember Praisner,  
39 Everything is contracted...

40  
41 Councilmember Floreen,  
42 If I could finish.

43  
44 Councilmember Praisner,



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1 Well, I'm just trying to answer the question.

2  
3 Councilmember Floreen,

4 I haven't finished -- I'd just like to ask the question. If the County is asking -- is having  
5 someone construct a building for us, is it clear that the construction contract -- would  
6 that be subject to this or not?

7  
8 Councilmember Praisner,

9 It would not because a County employee is not providing that service at this point in  
10 time, and that's the threshold question. Is a County employee providing that function?

11  
12 Councilmember Floreen,

13 So when we use the term "services related to the procurement or construction," it only  
14 means the service necessary to get the ball rolling with the services?

15  
16 Councilmember Praisner,

17 If there's someone who manages now, in County government, the contract process, that  
18 would be someone related to the...

19  
20 Councilmember Floreen,

21 Right. Contracting services, I understand. So the bundle of items involved in  
22 construction work would not be subject to this?

23  
24 Councilmember Praisner,

25 No.

26  
27 Councilmember Floreen,

28 Okay.

29  
30 Council President Leventhal,

31 Mr. Silverman.

32  
33 Councilmember Silverman,

34 Thank you. I just want to follow up on Ms. Praisner's -- I'm sorry, Ms. Floreen's  
35 comments. So on line 47 where it says, "any professional service unless that service is  
36 provided by bargaining unit employees when the contract is solicited." So the current  
37 contracts that we have with mental health services, through a whole host of non-profit  
38 providers, they would not be covered, but if we decided to close down the health center  
39 we have in Silver Spring, where we've got professional mental health services, that  
40 would be covered by this. Is that correct?

41  
42 Councilmember Praisner,

43 Correct.



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1 Michael Faden,  
2 Assuming those services are provided by bargaining unit employees.

3  
4 Councilmember Praisner,  
5 Right, and those employees would be adversely affected by that situation.

6  
7 Councilmember Silverman,  
8 What is -- I apologize because I didn't get to read this until last night, as well. Where is  
9 the reference to adverse effects?

10  
11 Councilmember Praisner,  
12 Line 22.

13  
14 Michael Faden,  
15 And also up above, on line 5.

16  
17 Councilmember Praisner,  
18 Right.

19  
20 Michael Faden,  
21 Basically, it is a reduction, or elimination of work performed by a County employees  
22 which then results in one of the things listed on lines six through nine.

23  
24 Councilmember Silverman,  
25 So loss of bargaining unit work would be if we eliminate the health -- the mental health  
26 center that we have in Silver Spring if those people go somewhere else in County  
27 government?

28  
29 Michael Faden,  
30 Well, if those people did not lose County employment as a result, then it wouldn't be  
31 covered.

32  
33 Councilmember Praisner,  
34 Then it wouldn't be.

35  
36 Michael Faden,  
37 But if they were to lose County employment or have their pay reduced, then it would be  
38 covered.

39  
40 Councilmember Silverman,  
41 Okay. Okay, thanks.

42  
43 Council President Leventhal,



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1 Well, great. I thank the MFP Committee for its good work on this legislation. Let's be  
2 clear that this legislation continues to allow contracting out in circumstances where a  
3 substantial significant savings to the taxpayer is to be achieved. So this legislation  
4 simultaneously provides humane reassurance to our employees that we value their  
5 work and that we have a strong merit system and system of protections in place, while  
6 at the same time, if in future, really substantial savings to the tax payer can be  
7 achieved, it enables County government to use a variety of tools and instruments to  
8 achieve those savings. So...

9  
10 Councilmember Praisner,  
11 Can I comment on that? Because it provides an opportunity for the employees to  
12 demonstrate that they can do it more efficiently, as well. And one of the reasons why I'm  
13 supportive of this is that we've been talking -- Mr. Renne and I and I think County  
14 government -- about issues on gain sharing and about the fact that County employees  
15 know the functions as well or better than anyone, and they can have an opportunity to  
16 demonstrate that they can do the job as even more efficiently than they doing now and  
17 this certainly would provide an additional incentive to do that.

18  
19 Michael Faden,  
20 That's correct.

21  
22 Council President Leventhal,  
23 Thank you. So again, I thank the MFP Committee for their good work on this and the  
24 clerk will call the roll.

25  
26 Council Clerk,  
27 Mr. Denis.

28  
29 Councilmember Denis,  
30 Yes.

31  
32 Council Clerk,  
33 Ms. Floreen.

34  
35 Councilmember Floreen,  
36 Yes.

37  
38 Council Clerk,  
39 Mr. Silverman.

40  
41 Councilmember Silverman,  
42 Yes.

43  
44 Council Clerk,



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1 Mr. Knapp.

2  
3 Councilmember Knapp,

4 Yes.

5  
6 Council Clerk,

7 Mr. Andrews.

8  
9 Councilmember Andrews,

10 Yes.

11  
12 Council Clerk,

13 Mr. Perez.

14  
15 Councilmember Perez,

16 Yes.

17  
18 Council Clerk,

19 Ms. Praisner.

20  
21 Councilmember Praisner,

22 Yes.

23  
24 Council Clerk,

25 Mr. Leventhal.

26  
27 Council President Leventhal,

28 Yes. The Bill passes 8-0.

29  
30 Gino Renne,

31 Mr. President?

32  
33 Council President Leventhal,

34 Mr. Renne.

35  
36 Gino Renne,

37 May I have a point of personal privilege?

38  
39 Council President Leventhal,

40 You may.

41  
42 Gino Renne,

43 On behalf of the 5,000 members that we represent who serve the Montgomery County  
44 community, I want to enthusiastically thank all of you. Our members have patiently



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1 waited for these rules of engagement, if you will, for 12 years. I want to personally thank  
2 the Council President for introducing this bill. I would like to thank the County Executive  
3 for being supportive of it. The MFP Committee members, Councilmember Praisner, Mr.  
4 Denis and Mr. Andrews for your unanimous support, and the entire Council body for  
5 supporting your work force, our members, who deliver a high level of quality services to  
6 the community. Thank you very much.

7  
8 Council President Leventhal,  
9 Thank you, Mr. Renne. We're grateful for the work of our public employees in  
10 Montgomery County. Next before the Council is Expedited Bill 20-06. SoccerPlex Lease  
11 Amendments. The PHED Committee put in a lot of time and effort on this and Chairman  
12 Silverman, in particular, has made this particular area of expertise and we thank him for  
13 ...

14  
15 [LAUGHTER]

16  
17 Council President Leventhal,  
18 We thank him for doing the work...

19  
20 Councilmember Silverman,  
21 Goal!

22  
23  
24 Council President Leventhal,  
25 ...so the rest of us didn't have to. Chairman Silverman.

26  
27 Councilmember Silverman,  
28 Thank you. All right, here we are a month away from the start of the soccer season. The  
29 Committee has unanimous recommendations. Ms. Praisner generally endorsed the  
30 lease amendments but preferred to maintain the lease term at 25 years, with possible  
31 extensions up to 15 more years, rather than effectively convert the lease to a 40-year  
32 term, as these amendments do. We'll take up any amendments as people want to bring  
33 them in to play as we go through the issues, which I think is the best way to do this. So  
34 we'll just start on the issues that start on page two. The first one is Planning Board  
35 approval. Let's see -- I apologize, Mike, but I'm trying to see here. This is what we  
36 discussed, but are the Committee recommendations contained in the first two pages  
37 here?

38  
39 Michael Faden,  
40 This reflects the issues that you discussed, and generally each one -- somewhere in  
41 there is the final Committee result. Although it's not laid out that way.

42  
43 Councilmember Silverman,



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1 It's not the usual, like, bold here it is, Committee recommendation. All right. Well, in any  
2 event, the language -- this is probably more important -- the language in the lease says  
3 that there has to be -- the Planning Board has to initially approve the field-use  
4 guidelines within 90 days after the lease is executed. does not require annual  
5 approvals. It's only where there is an MSF proposed revision. The staff of the Planning  
6 Board and the Foundation interpret the least to give the Board authority to approve field  
7 use fee schedules, hours of operation and internal dispute resolution process, at least at  
8 the outset, but not on an annual basis, and the terminology about unreasonably  
9 withheld is later on. So we'll see if there -- we've lost both the President and Vice  
10 President.

11  
12 [LAUGHTER]

13  
14 Councilmember Silverman,  
15 Past present [INAUDIBLE].

16  
17 Councilmember Perez,  
18 [INAUDIBLE] the guy sitting here who can see.

19  
20 Councilmember Silverman,  
21 Yeah, exactly.

22  
23 Councilmember Andrews,  
24 Thank you. This lease puts a very big obligation on the Planning Board. It really is  
25 critical that the Planning Board provide very thorough scrutiny and review and careful  
26 consideration of approval at the outset. Because it is, at least at that point, where the  
27 Planning Board can substantially shape the lease and put conditions in, and at least  
28 ensure that conditions that are appropriate are approved. So I want to say that I think  
29 the successful or satisfactory outcome here really depends on the very careful work and  
30 strong work of the Planning Board in the next few months to make sure that this works  
31 right from the start. It's complicated in many ways. The Planning Board I hope will  
32 devote as much time as necessary to getting it right from the start, where it will have the  
33 most influence. And I would like to hear some comments from the representatives of the  
34 Planning Board about how they plan to approach this.

35  
36 Mary Bradford,  
37 We're going to be of course working on the guidelines for field use allocations, some of  
38 the other requirements that are in this lease. And it will be coming before the Planning  
39 Board when the Planning Board reconvenes in September. And clearly, this is going to  
40 be a high-priority -- it's one of the hot topics we've identified for the fall season for the  
41 Planning Board to really focus on it. And everybody understands the concerns at play..

42  
43 Councilmember Andrews,  
44 Okay. Thank you.



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Council President Leventhal,  
Well, well, well.

Councilmember Silverman,  
Okay, on to the next item. Field use preferences. I'm just going summarize this. We had an extensive discussion. Bottom line is that -- and probably the easiest way to do this -- where's the chart? Circle 83?

Michael Faden,  
Right.

Councilmember Silverman,  
Circle 83 lists everybody here, in terms of what the proposed schedule is, although I'll reference modifications in this. But the question that was raised is whether SAM will be considered to be an existing user. The answer is they will be. So they will be entitled to field use preference. The bottom line on this is that the way we have structured this is that the organizations who are basically have historically played at the SoccerPlex and will be playing again this fall get first dibs. That's the simplest way of putting it, in terms of continuing ongoing preference. They will have a contractual agreement which is renewable, that entitles them to a certain allocation of games, and the bottom line is that in order for someone else, another organization, to come in and play, then there would have to be, in effect, a relinquishment of some games by existing users. That was designed to ensure that five years from now, when these agreements expire, that you don't have a situation where the Foundation would turn around and either substantially reduce or zero out a club that has been playing at the SoccerPlex at a certain level for what by then will probably nine years. Eight or nine years. And that addresses one of the fundamental concerns that was expressed by several of the organizations that since this lease amendment effectively gives the Planning Board the ability, at the outset, to approve field allocation guidelines, it wouldn't -- the Foundation would essentially have a right, unless there's language in this lease or in some other document, like the Field Allocation Guidelines, to dictate who gets what games. So this is sort of a minimum guarantee scenario for the clubs, as reflected on the chart on Circle 83. I'll get to a little bit more detail about this in the next section.

Council President Leventhal,  
Okay. Ms. Praisner?

Councilmember Praisner,  
Two things. I want to comment on the Field Use Preference and the Upcounty Preference together. And here's my problem that has actually surfaced again in an e-mail, a very innocent e-mail that comes recommending support of the lease, and notes that the individual manages a group of 16 boys from Frederick, Maryland, who play at the SoccerPlex and want to continue to play at the SoccerPlex. And with all due



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1 respect, I don't have any problem with folks, to the extent there is space available and  
2 opportunity available, which is the pecking order that I think we created, having that  
3 opportunity. But as we didn't -- I'm not sure how we talked about it -- I'm a little worried  
4 by organizations that say they are Montgomery County organizations that may or may  
5 not -- and have a number of games provided to them based on previous experience, et  
6 cetera -- who may continue to morph that access to numbers of opportunities into an  
7 opportunity to expand beyond Montgomery County. So I want to be sure, when the  
8 Planning Board looks at the guidelines, et cetera, that whether it's an Upcounty  
9 preference or a Field Use Preference, that we also apply the issue of the Montgomery  
10 County preference to that preference. So in other words, there's a pecking order. You  
11 may have the capacity for "X" number of games, but over the life of that use of those  
12 games, I would hate to see three or four games using other county people then become  
13 an opportunity to, in my view, use the access to those fields as a expansion of the non-  
14 County use of those fields.

15  
16 Mary Bradford,

17 Ms. Praisner, on Circle 26, paragraph 4 talks about this pecking order you reference  
18 and the first priority in the pecking order is existing soccer field users. Then by other  
19 Montgomery County soccer teams, then other teams in Maryland, then other soccer  
20 teams. So I would read this to say if you are an existing out-of-county user, you would in  
21 fact continue to take preference over a county team that is not an existing user. I don't  
22 know if that was...

23  
24 Councilmember Praisner,

25 And I'm not sure that was our perspective. And I also understand the challenge of, you  
26 know, ten kids on a team and you need to fill it out and you fill it out with three or four  
27 from some other jurisdiction. is that an out-of-county team or is that an in-county team? I  
28 actually would like the Planning Board to address this issue, not the Council, but I think -  
29 - because I do not think we here can think of every scenario and you will have time  
30 during this discussion of the guidelines to ensure that no -- I guess the point I would  
31 make is no continued capacity under existing field preference should permit the  
32 expansion of non-Montgomery County play at the SoccerPlex, where County users  
33 would not be served as a result. That, I guess, is the only way I can phrase it that I can  
34 think of.

35  
36 Gino Renne,

37 So at the expense of the current use or the needs expressed by...

38  
39 Councilmember Praisner,

40 Or the needs of Montgomery County.

41  
42 Gino Renne,

43 ...county teams and clubs.



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1 Councilmember Praisner,  
2 So I guess I would say that on the record, rather than to change the lease business,  
3 because I think you can look at that from a Montgomery County preference perspective.  
4 You also can look at it technically -- I don't think I can rewrite this section right now, but I  
5 think the intent is pretty clear from the Committee's conversation and from our  
6 discussions that we're talking about allowing folks who have a relationship to continue,  
7 but also I think monitoring the Montgomery County participation in that relationship. So  
8 to the extent we have existing associations that have some participation outside the  
9 county, I just would be uncomfortable if that grew and Montgomery County participation  
10 diminished. So I think if you, Mary and Bill, all three of you, would take that back to the  
11 Planning Board, I think that's something that you need to look at.

12  
13 Council President Leventhal,  
14 Chairman Silverman.

15  
16 Councilmember Silverman,  
17 No.

18  
19 Councilmember Praisner,  
20 No?

21  
22 Councilmember Silverman,  
23 Yes. No.

24  
25 Councilmember Praisner,  
26 Oh, okay.

27  
28 Councilmember Silverman,  
29 Okay, fairness standard, we sort of -- fine, let's talk about fairness; let's talk about  
30 Upcounty. You know, let me be direct, as we were in Committee in terms of the  
31 discussion. The big concerns that we heard about the issue of game allocation were  
32 number one, we heard from other clubs other than MSI about what might happen five  
33 years from now when they go to renew, that it's possible that they could, as I said  
34 earlier, get substantially reduced or zeroed out. The other concern that we heard, and  
35 the only organization that's out there now that expressed concern about its game  
36 allocation was from MSI. And if you turn to Circle 83, you will see that even with the  
37 expanded games in fall 2006, with a total number of 1,536 games, MSI would get 504  
38 rather than their requested 600. If you jump ahead to spring and fall of 2007, again with  
39 expanded play, you still have a situation where MSI does not get the games that it  
40 requested. Rather than get into rewriting the lease specifically, the concern was raised  
41 with the Foundation and on Circles 75 through 77 is a letter from Ken Salomon,  
42 President of Maryland Soccer Foundation, indicating a commitment to give MSI its  
43 requested 600 games. That would modify their cap that they had in place of a 400-game  
44 requirement. And the representations made in the July 21 letter will be incorporated into



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1 the field usage allocation guidelines. That was clearly indicated by both the Foundation,  
2 as well as the Planning Board, that they expect that would be included in there. And to  
3 the extent that the Planning Board will, under this lease, have the ability to approve the  
4 field allocation guidelines, then we would expect the Planning Board would reject it if  
5 those terms weren't contained in here. So we've tried to address a requirement -- a  
6 balancing of interests in terms of field use preferences, fairness, and the Upcounty  
7 preferences, which is designed to accomplish a couple of things. Provide opportunities  
8 for historic users to be able to, in effect, play at least in the range of the number of  
9 games they've played in the past, and not create a completely formula-driven process  
10 which says that if you represent 62% of the soccer players in Montgomery County, that  
11 therefore you're entitled to 62% of the games at the SoccerPlex. The reason why it's  
12 important not to have a formula-driven process is because that creates a complete  
13 financial dependence on one organization, which if they decided at the end of four or  
14 five years to pull out, could in effect create a challenge for Maryland Soccer Foundation  
15 to meet its lease obligations. So probably fair to say that some folks would have  
16 preferred a more formula-driven process, but the balancing act is to ensure, as well, the  
17 financial viability of the SoccerPlex and also to address the policy issue, which is to  
18 make sure we've got Montgomery County kids playing on Montgomery County's finest  
19 soccer fields and not get into whether it's one organization or another that is going to  
20 end up playing a precise number of games compared to their precise representation in  
21 the soccer community. The Upcounty preference will not take preference over the  
22 commitments that are made to historic users and that are contained in the letter from  
23 Ken Salomon. Where it will kick in -- I'm trying to use as many soccer references as  
24 possible here -- is in the event that there are excess games available in a particular  
25 season, then teams from the Upcounty would, in effect, have first dibs on those excess  
26 games. So if hypothetically SAM decided not to use all the games available in a  
27 particular season, then the preference would go -- all its games -- the extra 50 games,  
28 for argument's sake, the first cut would go to teams that are in the Upcounty, which are  
29 either represented here if they wanted more games, or conceivably new users. You  
30 have a quizzical look on your face, Bill.

31  
32 Bill Mooney,  
33 I thought we took out the Upcounty preference.

34  
35 Councilmember Silverman,  
36 No, we didn't.

37  
38 Bill Mooney,  
39 Oh, we didn't?

40  
41 Councilmember Silverman,  
42 No, they wanted to -- Ms. Praisner wanted it out. The Committee majority and staff  
43 wanted it. The Committee majority was to keep it in. This was a provision that had been  
44 in the original lease, so there was no change from now, but it was also part of a let's just



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1 say a trade-off at the time that the original lease was negotiated, that since there was  
2 the benefit of these fabulous fields, but also the downside of significant traffic and  
3 potential community impact, the trade-off that was made at the time of the lease  
4 negotiation between I'll just say Bill Hussmann, who's Chair of the Planning Board, and  
5 the Foundation at the time, was to create this Upcounty preference. It was not really  
6 discussed at the time that we took up the lease seven years ago. 1999, seven years  
7 ago, because it was already in there and nobody raised it as an issue.

8  
9 Council President Leventhal,  
10 Mr. Perez.

11  
12 Councilmember Silverman,  
13 I see the gentleman from Downcounty has...

14  
15 Councilmember Perez,  
16 Yeah, well, I appreciate all the time and effort...

17  
18 Council President Leventhal,  
19 He's going to propose that we move the SoccerPlex to Rockville.

20  
21 Councilmember Perez,  
22 Well, I had proposed that weeks ago. That was my friendly amendment to the Park and  
23 Planning move. We're moving everything to Rockville. We need centrally located  
24 facilities everywhere. And the Councilmember from District 3 likes that idea. I have  
25 given considerable thought on this issue of this preference. I am not going to offer an  
26 amendment. Yesterday I was leaning toward and today I've decided not to for the  
27 simple reason that I know there's been a lot of time and effort that has gone into this  
28 and there's a lot of delicate needles that are attempting to be threaded in this  
29 agreement. I've spoken -- I have many, many, many friends in the Downcounty who are  
30 participating in MSI and who use the SoccerPlex and I also don't think -- I don't think it's  
31 the will of the majority and I don't want to belabor it. It's an issue that sort of jumped off  
32 the table when I first reviewed the lease and wondered -- I guess where you sit  
33 determines where you stand on this issue and I respect that. I don't want to engage  
34 another Downcounty - Upcounty debate that sometimes is less healthy than we'd like it  
35 to be. Because I do think -- my second concern is the issue of the emerging entities,  
36 because I want to make sure that they have an opportunity -- and I've spoken to many  
37 fledgling organizations and that was my equally strong concern with this Upcounty  
38 preference was making sure there are provisions that reflect the fact that we're a  
39 dynamic community. And with that -- with the demographic transformation of our county,  
40 one of the many ramifications of it is this whole issue of soccer. And we want to make  
41 sure that there are provisions in place that will allow new organizations an equal  
42 opportunity to compete. And I think on balance, that is there. So I wanted to flag this  
43 issue. You brought it up at the end of your remarks, Mr. Chairman. And I do not intend  
44 to bring up the -- I will not make a motion in the spirit of comedy -- that's comity, not



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1 comedy -- and I think we can move forward. I intend to support the lease. We've all  
2 gotten a lot of mail on this. And this fairness standard was the issue that was probably  
3 the most discussion. Fairness is indeed in the eye of the beholder and fairness is  
4 indeed a function of where you sit and where you live. And so I respect that. And I  
5 respect that there was a lot of hard work put into this, so I intend to support what was  
6 done by the Committee, notwithstanding my personal misgivings about the Upcounty  
7 preference. I don't think there should be a Fredrick preference, however, and so we will  
8 -- in light of your e-mail there, I do have some concern about that, but I have to step out  
9 for a moment. I hope to be back in time for close,

10  
11 Councilmember Silverman,

12 I'll just comment, Mr. Perez, there is a 5% set-aside that is in the lease, which is  
13 essentially for folks who haven't made long-term commitments. And the hope would be  
14 that -- you know, to use an an example, if Long Branch Athletic Association is creating  
15 soccer teams, that there would be theoretically an opportunity for them to play some  
16 games. If there were any other group, whether it's -- emerging soccer clubs, that's the  
17 hope,

18  
19 Councilmember Perez,

20 I apologize for having to step out for a moment.

21  
22 Council President Leventhal,

23 Okay. Ms. Praisner.

24  
25 Councilmember Praisner,

26 My recollection was how the Upcounty preference was added was that it was added at  
27 the end, in a discussion at the Council table about the concerns about traffic. I may  
28 have forgotten it, but I think that's when it was added and it related to traffic and traffic  
29 impacts and the concern of the community about traffic. What we heard the most about  
30 when we initially did this lease and arrangement was the neighbors in the areas  
31 concerned about this extra large facility. And the second piece we heard about was all  
32 of the other amenities that should be in the park that would service the broader  
33 community of the area, namely it was an area park, regional or whatever. Those terms  
34 really don't mean anything. But that there would be the -- the other pieces of park  
35 facilities being built in a brisk time period, and also the issue of the impact that the larger  
36 community attraction would bring to the area. So we added the preference for the  
37 Upcounty at this table, I think, in relationship to Ms. Dacek's concerns to be responsive  
38 to the community's concerns. So it wasn't something Bill Hussmann negotiated earlier,

39  
40 Councilmember Silverman,

41 I stand corrected.

42  
43 Councilmember Praisner,



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1 At least my recollection of it, and I certainly would stand corrected if I'm wrong. But the  
2 concern was to make sure that the Upcounty, which would bear the traffic burden,  
3 would also have some benefit. I think that since that introduction into the lease, we  
4 really haven't used that issue and it hasn't been an issue. I think the issue is joined now  
5 by the expansion and by the broader community interest in soccer, which I acknowledge  
6 Mr. Perez indicates is ubiquitous in this county at this point. And quite honestly, the  
7 less-than-adequate soccer fields across this county. So the point being I live in Aspen  
8 Hills, say, and I want to play soccer, I don't want a scheduling issue to diminish my  
9 capacity to use this incredibly outstanding facility just because I'm not in the Upcounty.  
10 And my alternative is less than ideal, and I'm providing taxpayer support, or have over  
11 the years, just like everyone else. So that's the concerns that I think -- and also the  
12 introduction of SAM and the extent to which SAM may be defined as an Upcounty  
13 program and it's enthusiasm and expansion needed to -- in order to make the facility  
14 financially and expand the capacity. If I felt that SAM were aggressively marketing and  
15 involved with elsewhere in the county and if and I felt that folks who are now woefully  
16 relegated to less-than-ideal fields would have an equal opportunity at the new facilities  
17 and the expanded use of those facilities, I wouldn't have a problem with the Upcounty  
18 preference remaining. But I continue -- and obviously I was a minority on the Committee  
19 -- given Mr. Perez's commitments, it really serves no purpose to introduce a motion at  
20 the point. But I'd like to be recorded as opposed to continuing the Upcounty preference  
21 at this point. It was something that we haven't used. It was something that was a traffic-  
22 associated issue. I'm not sure that traffic is going to matter from how far away you  
23 come. I'm not sure we had a good rationale for it when we introduced it, but it was kind  
24 of an offset to the increase in traffic. Yes, there'll be even more traffic perhaps, but I  
25 think we've responded to that issue by road accommodations and by scheduling issues.  
26 So I don't want to see the Upcounty preference anymore and I want to see -- again,  
27 make sure that the Montgomery County preference is loud and strong. And I also want  
28 to indicate at this point that I did request the PHED Committee to schedule -- and I know  
29 our agendas are full -- schedule some discussion about the conditions of the other  
30 soccer fields and the other stress that we're seeing on neighborhood parks, et cetera,  
31 on folk's desires for soccer. So the question becomes we may have a demand that  
32 cannot be met and certainly there is a need to perhaps broaden folks' understanding of  
33 the capacity to use the SoccerPlex and broaden the outreach for new and emerging  
34 organizations, both youth and more mature individuals who may be playing soccer. But I  
35 think this is a bigger issue than just an Upcounty preference, so that's just my  
36 recollection, Mr. Silverman. I may be wrong as well, but that's my recollection of when  
37 the Upcounty preference was added and why.

38  
39 Council President Leventhal,  
40 Chairman Silverman.

41  
42 Councilmember Silverman,

43 Okay, move on to a lawyer's nightmare unreasonably withheld for all the lawyers in the  
44 room and those watching on TV. This lease requires the Planning Board's approval of



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1 certain documents cannot be unreasonably withheld. It basically makes it a tougher  
2 standard for the Planning Board to reject certain provisions that would be contained in  
3 items provided by the Soccer Foundation. It is, as with many of these things, it was part  
4 of the overall lease and I believe the Committee felt that this -- while we appreciate what  
5 staff's position was, that this was not going to be a critical issue, in terms of taking it out  
6 of the lease.

7  
8 Council President Leventhal,  
9 Okay. No comments.

10  
11 Councilmember Silverman,  
12 Internal dispute resolution, there were some changes in the original language about  
13 internal dispute resolution. That's on Circle 27. The key change that we made here --  
14 and these would be internal dispute resolution procedures which would be incorporated  
15 into the guidelines which would have to get approved by Park and Planning -- the key  
16 change that we made was that as it originally came over, it would have required users  
17 to go through an internal dispute resolution before coming to the Commission or to the  
18 Council to complain about something. So we took that out thinking there's a  
19 fundamental First Amendment issue there. And figured that this will get worked out  
20 when there is a review of the guidelines by Park and Planning. That's where that is.  
21 Advisory Committee, the SoccerPlex Advisory Committee has outlined on Circle 15 in  
22 terms of its composition. It is an Advisory Committee to the Foundation, which is going  
23 to be comprised of folks involving -- including a representative of each regular soccer  
24 user of the soccer fields. We had a discussion about who would sit on the Committee, et  
25 cetera, et cetera and decided that would get sorted out. I think more importantly -- and  
26 this is just something that the Planning Board -- this was an issue that was raised and  
27 the Planning Board may want to take this under advisement. One of the concerns was  
28 that some folks in the soccer community wanted the Advisory Committee to be an  
29 Advisory Committee to the planning board. This is an Advisory Committee to the  
30 Foundation. There's nothing that prevents the Planning Board from creating its own  
31 Advisory Committee -- ad hoc Advisory Committee if it chooses to. I think the most  
32 important thing is that there has to be a direct line of communication between the users  
33 of the SoccerPlex and the Planning Board, which is the other party to the lease. So  
34 whether that gets structured as some separate Advisory Committee or occasional  
35 working group that meets once in a while, that the Planning Board can figure out what, if  
36 anything, it wants to do, I think it makes sense to ensure that there's some direct linkage  
37 there.

38  
39 Council President Leventhal,  
40 Keep going. Oh, Ms. Praisner has a comment.

41  
42 Councilmember Praisner,  
43 I thought we made some pretty firm comments about our expectations for participation.  
44 And I'm not sure -- especially about the fact that an organization would nominate or



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1 recommend the people that it would -- the person who would represent its organization  
2 and the Foundation would not unreasonably withhold the capacity of that organization to  
3 name whomever they want. And that's pretty standard.

4  
5 Councilmember Silverman,  
6 That was the Committee discussion.

7  
8 Councilmember Praisner,  
9 And that's not reflected here, so I want to make sure that we're clear about that issue.  
10 You know, every organization participating should have advisory -- representation on  
11 the Advisory Committee and they should name the person they want on the Advisory  
12 Committee. If the person doesn't attend or is disruptive, then I think there's some  
13 dialogue back and forth, but I don't think that the Foundation should pick and choose.  
14 And I also think that Montgomery County folks are not shy, nor are our organizations  
15 shy, and I'm sure the Planning Board, however it structures comments that it may  
16 receive or complaints or whatever, as well as the Foundation, we're going to hear from  
17 people. So suggesting that -- I think the one thing I had a problem with and I don't  
18 remember -- I think the rest of the Committee agreed is that we wouldn't have  
19 proportional representation kinds of issues because I think that's extremely awkward  
20 and unnecessary to get your point across.

21  
22 Bill Mooney,  
23 And we understand that discussion the same way.

24  
25 Councilmember Silverman,  
26 Okay, external dispute resolution, there is a process on 25-B. I'm sorry, that's not right.  
27 Yes, Circle 63, 25-B, which basically says that the Foundation shall, at the request of  
28 the Commission, participate in a mediation process. This was designed to address -- to  
29 in effect require the parties to have some other means of getting together short of  
30 Notice of Default scenario. And the language that we have in here was acceptable to  
31 the Committee. Staff is like continuing on -- I should have said that at the beginning. Mr.  
32 Faden, I think you as a lawyer would say continuing objections, I believe, to a variety of  
33 these provisions. And then finally the lease term extension, the change here is  
34 essentially from a 25-year lease to provide opportunities for five and ten-year  
35 extensions to a 40-year lease. And remind me again, we've got other park facilities that  
36 have long-term leases?

37  
38 Carol Rubin,  
39 Actually I'd like to address that issue. The -- Carol Rubin for the Planning Board. It was  
40 simply a clarification for the existing lease. The term has not been extended to 40 years.  
41 It's still a 25-year term with two options for extension. The previous provision -- or the  
42 previous form of the lease before this amendment basically said in the default -- or in  
43 the extension provisions that it was an option of the Foundation and the Commission --  
44 and the only reason the Commission could deny the right to extend was if the



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1 Foundation was not meeting -- and I use the words "meeting the needs" of the soccer  
2 community. What we did in this particular lease -- so what we did in this lease was  
3 defined more clearly what does it mean to meet the needs of the soccer community.  
4 And that was defined as tightening up the guidelines -- the allocation guidelines -- and  
5 and then determining that if those guidelines are not complied with, that it becomes an  
6 event of default and therefore now the reason that the Foundation would not be able to  
7 extend is if they are in an event of default. So it's the same basic provision that it's  
8 simply clarifying the language of what does it mean to meet the needs of the soccer  
9 community. If they don't do it, it's a default, same reason they wouldn't be able to  
10 extend. So in a sense, it hasn't converted the lease term to a 40-year term. It is simply  
11 clarifying why the Foundation would not be able to extend and it's no different than it  
12 was before.

13  
14 Michael Faden,  
15 We don't agree with that analysis.

16  
17 Councilmember Silverman,  
18 So noted.

19  
20 Michael Faden,  
21 Just to elaborate -- Go ahead, Mike. Elaborate for one sentence. The standard was --

22  
23 Councilmember Silverman,  
24 Take as much time as you want.

25  
26 Michael Faden,  
27 I'll be brief. The standard was whether -- for an extension was whether the Foundation  
28 is meeting -- at the time, is meeting the needs of the soccer community. That is is much  
29 broader than an event of default. Event of default is -- the phrase we've used is  
30 "dropping the bomb." Otherwise, the way the lease was, Planning Board had to make  
31 an affirmative decision was that the Foundation was meeting the needs of the soccer  
32 community. That's out of the lease. In our view that's a substantive change. Whether it's  
33 a good change or not is up to the Council.

34  
35 Council President Leventhal,  
36 Ms. Praisner.

37  
38 Councilmember Praisner,  
39 Well, on this issue, I think this is a major departure. And I don't see the Foundation at  
40 risk in using the old format. And I also think the meeting needs is one that the  
41 Foundation can very easily demonstrate by the capacity to provide the -- the field use  
42 and the number of folks who are enjoying the SoccerPlex, but I have a problem of  
43 default issue as a term. But I also have a problem that this does in essence make it a



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1 40-year lease, rather than as an extension. And I would like to move that we revert to  
2 the current language.

3  
4 Councilmember Andrews,  
5 Second.

6  
7 Council President Leventhal,  
8 Ms. Praisner has moved and Mr. Andrews has seconded a change in the lease term in  
9 the existing language. Is there discussion? Chairman Silverman?

10  
11 Councilmember Silverman,  
12 My light's on because I'm..

13  
14 Council President Leventhal,  
15 Okay, is there objection? Hearing no objection -- Ms. Floreen?

16  
17 Councilmember Floreen,  
18 Can we have a vote on it? I don't support it,

19 .  
20 Council President Leventhal,  
21 Well, I asked if there was discussion, we certainly -- yeah, if you object, we'll vote.

22  
23 Councilmember Floreen,  
24 Let's vote.

25  
26 Council President Leventhal,  
27 Okay. Okay. Those in favor of the motion will signify by raising their hands. It is Ms.  
28 Praisner and Mr. Andrews. Those opposed will signify by raising their hands. It is. Mr.  
29 Knapp, Mr. Denis, Ms. Floreen, Chairman Silverman and myself. The amendment is  
30 defeated five to two. Next item, Chairman Silverman.

31  
32 Councilmember Silverman,  
33 That is it.

34  
35 Council President Leventhal,  
36 That is it, so the lease is now before us. And I'm sorry, does this require a roll call vote?  
37 Yes, it does.

38  
39 Michael Faden,  
40 It's a bill.

41  
42 Council President Leventhal,  
43 It is a bill. It is- actually Expedited Bill 2006. The clerk will call the roll.  
44



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1 Councilmember Silverman,  
2 Mr. Knapp wanted to speak.

3  
4 Councilmember Knapp,  
5 Thanks. I will be brief. I just want to make a couple of remarks. This has been a long  
6 process for many, the Chair of the PHED Committee, in particular, and folks at the  
7 SoccerPlex, and I know staff. I just want to thank everyone who has participated in it  
8 and the PHED Committee for the time they've taken over the course of the last few  
9 months. One of the things that I wanted to just try to get back on the table is  
10 unfortunately for a variety of reasons, issues around the SoccerPlex are appearing to be  
11 more contentious than I think they necessarily need to be. I guess what I want to put out  
12 there is the notion that this really is a positive program and a positive facility. That we  
13 have probably one of the finest soccer facilities in the country here in Montgomery  
14 County. And somehow through the course of discussion that seems to get lost and I  
15 think it's important for us to kind of refocus on that. So I hope that by us kind of getting  
16 this lease amendment passed today, that we can now really begin to focus on the  
17 number of people who will take advantage of this. The number of people who use this  
18 every day, every week, every month. There isn't a place I go in the County -- every now  
19 and then they let me go into other districts -- and when I meet with people in other  
20 districts, they all have been to Germantown, if for no other reason than because they've  
21 ended up at the SoccerPlex. I was surprised, we did the emergency room dedication  
22 yesterday in which the Governor came down. One of the things that struck me even  
23 outside the county are the number of state legislatures who know of the SoccerPlex and  
24 who have managed to work their way through us. And actually I think that helped us in  
25 ultimately get the emergency room legislation passed in Annapolis because so many  
26 people understood the need as a result of their activities at the SoccerPlex. I surprised  
27 when we did the testimony last year that right now there are more than half a million  
28 people that come to the SoccerPlex each year. Half a million just for that facility. And  
29 most of those people don't know all of these pieces, which is good. And I hope that now  
30 that we get this through, we can really focus on the partnership between the Soccer  
31 Foundation, the SoccerPlex itself, the Planning Board, us, the community, and our  
32 soccer clubs, to really make sure we strengthen that, refine it, and really build upon it so  
33 that every time the word "SoccerPlex" comes up, people don't say, "Oh, aren't they in  
34 financial difficulty?" Or "Wow, I heard there were problems with that." There always  
35 seems to be a negative connotation associated with it and I don't know there's  
36 necessarily a need for that. But it tends to be because every time there's debate, it  
37 becomes more contentious than I think it needs to be. I think when you look at the  
38 notion that this was founded on, which is that our kids have access to a great soccer  
39 facility, I think by virtually any measure, that goal has been exceeded. And I think with  
40 this lease amendment, we are now taking it to another level to make more accessibility  
41 for more people. And so I hope that this really becomes kind of our opportunity to take  
42 this to the next level and make this a very, very positive relationship, which I think, for all  
43 intents and purposes, that it is. And I think it's exciting. I think it's -- I know when it came  
44 out six or seven years ago, there were a variety of difficulties because much of that part



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1 of Germantown had not yet been built out. There are tens of thousands of people now  
2 live immediately adjacent to the SoccerPlex who take advantage of it, who love it. They  
3 walk in it, they bike in it, they hike in it. They play soccer in it, they swim in it. They  
4 hopefully soon will play tennis there. You name it and has become the focal point of the  
5 community. 10,000 people went there for fireworks just a few weeks ago. There are  
6 huge celebrations for the Indian community, where tens of thousands of show for that.  
7 You name it, from a cultural perspective, from an athletic perspective, it is truly a jewel  
8 in our community and I just want us to get to a point now that we actually have the  
9 positive connotations I think it pretty clearly deserves. So I thank everyone for their  
10 efforts over the course of the last few months and I think what we have in front of us is a  
11 very good vehicle that I hope will take what is a very, good complex and make it that  
12 much better.

13  
14 Council President Leventhal,  
15 Ms. Praisner.

16  
17 Councilmember Praisner,  
18 I'm going to vote for the legislation, but it is not without some reservations about some  
19 of the changes, which I believe our Council staff has highlighted to us, where the legal  
20 language does have some concerns for them. I appreciate very much Ms. Michaelson  
21 and Mr. Faden's input on the issue. A lot of the next steps are the major pieces and that  
22 requires the guidelines and the review by the Planning Board. And I'm sure that to the  
23 extent the community has on going questions and concerns, they will be raised through  
24 that process, I have no doubt. At the same time, I also very much appreciate the  
25 Foundation's work to date to try as a new entity to struggle with both the complexities of  
26 management and the desires of individual community members who have their own  
27 expectations of what would be involved. This is an incredible facility, and it is a very  
28 comprehensive park that was designed and had expectations from a regional park  
29 perspective. And given the significant population growth in that area, given the 270  
30 corridor as the only corridor in Montgomery County, again, from a planning perspective,  
31 I think it's important for us to understand that. It's a major transportation corridor, as well  
32 as a significant population center for the county. But that said, I think we have the rest of  
33 the County from a geographic perspective that we have to look at. Not just -- the  
34 SoccerPlex is not just for the Upcounty. It is for a broader use and the whole regional  
35 park is for broader use. We don't ask for you to show your driver's license or your  
36 precinct when you go to use the facilities. And so I think it's important for us to continue  
37 to say that over and over and over again. We have lots of other fields that need  
38 significant attention. We have lots of users -- MSI participated very broadly in this  
39 discussion with significant concerns, but they also demonstrated, I think, that the portion  
40 of their activity that is at the SoccerPlex is not the extent of their activity. There's a lot of  
41 soccer going on in Montgomery County, as Mr. Perez indicated, And we need to make  
42 sure that although not of the same magnitude, that soccer in Montgomery county exists  
43 in a positive way, whatever field you may happen to be on, positive from a standpoint of  
44 the user, but also positive from a standpoint of the neighborhood on which that activity



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1 occurs. So I would anticipate that in the months ahead that we will not only learn how  
2 the Planning Board has worked through the guidelines that need to be developed and  
3 reviewed, but we will also have further discussions about the quality of fields, the  
4 management of those fields, that are broader than whether they are school fields or  
5 county fields or Park and Planning fields, that are broader than this SoccerPlex  
6 legislation.

7  
8 Council President Leventhal,  
9 Okay. Chairman Silverman.

10  
11 Councilmember Silverman,  
12 Just a final comment. I appreciate everybody's hard work. Our staff, the Planning  
13 Board's staff, the Foundation, all the soccer enthusiasts. This has been a long process  
14 going back really about a year with a lot of tumult. It is a perfect lease? Of course not. It  
15 is just like the lease that we're amending which is some -- there's compromise in all  
16 elements of it. We have to balance community interest. We have to balance a vibrant  
17 soccer community with what we hope will be an even more vibrant soccer community  
18 with new participants with the fact that this is not our facility and we don't have a bottom-  
19 line financial aspect to this. We get the facility back if they go into default, so part of  
20 what it's in here is reflective of ensuring their financial viability, as well. But we are trying  
21 to strike the balance in what is absolutely a public/private partnership. And I think the  
22 provisions that were put in by the Council, particularly as it related to minimal allocation  
23 of games, will go a long way to providing that balance. So I hope we can move forward,  
24 as we do in other arenas, and focus on our soccer community and other sports, as well.  
25 Thank you.

26  
27 Council President Leventhal,  
28 Okay. Well done, Mr. Silverman. Thanks for your excellent work on this. I know Mr.  
29 Knapp has also put a great deal of time and effort into this. Are we ready to vote? The  
30 clerk will call the roll.

31  
32 Council Clerk,  
33 Mr. Denis.

34  
35 Councilmember Denis,  
36 Yes.

37  
38 Council Clerk,  
39 Ms. Floreen.

40  
41 Councilmember Floreen,  
42 Yes.

43  
44 Council Clerk,



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1 Mr. Silverman.

2  
3 Councilmember Silverman,  
4 Yes.

5  
6 Council Clerk,  
7 Mr. Knapp.

8  
9 Councilmember Knapp,  
10 Yes.

11  
12 Council Clerk,  
13 Mr. Andrews.

14  
15 Councilmember Andrews,  
16 Yes.

17  
18 Council Clerk,  
19 Ms. Praisner.

20  
21 Councilmember Praisner,  
22 Yes.

23  
24 Council Clerk,  
25 Mr. Leventhal.

26  
27 Council President Leventhal,  
28 Yes. Expedited Bill 20-06 carries seven to zero. We now take up amendments to the  
29 ten-year comprehensive water supply and sewer systems plan. Chairwoman Floreen.

30  
31 Councilmember Floreen,  
32 Thank you, Mr. President. The Council will be glad to know that we're back with the  
33 usual package of issues, child lots, PIFs, and peripheral sewer policy, as well as the  
34 challenge of reading our own Master Plans, none of which is as clear as we thought it  
35 was. So I'm just going to -- with that brief introduction, I'm just going to work my way  
36 through this, Mr. Chair, and if someone has a problem, I'm sure you'll let me know. The  
37 first one is application of Maurice Gladhill. This is a situation which is an application for  
38 water service for existing child lots. Our concern in the Committee was that given the  
39 child lot issue out there generally and our action on Water and Sewer within the  
40 agricultural reserve, which is this is in the RDT Zone, that we get some feedback from  
41 our Committee on the ad hoc working group on this subject. And so we have  
42 recommended that we defer this decision until we hear back from them. Number two is  
43 the application of Mr. Piper, which is approval of a sewer system service for one hook  
44 up for each of two existing parcels, and that is the one that we recommend approval for.



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1 Third is the complicated one. This is the Hyde application in the southeast quadrant of  
2 Olney, has generated considerable community concern. We spent quite a bit of time in  
3 the Committee session trying to understand the perspective of the Planning staff on this  
4 and took Ms. Dolan up and down the ladder of questioning in this regard. The challenge  
5 with this particular application is that the Master Plan indicated that the issue of the type  
6 of service would be determined at subdivision. We had recommended from Planning  
7 Board to deny the request, but they had not entertained the subdivision application. And  
8 it seemed to us rather circular to have this go about. and so rather than delay this for  
9 time immemorial, the recommendation of the Committee here is to defer the request,  
10 send it to the Planning Board, and ask for their express advice on this point.

11  
12 Council President Leventhal,  
13 Ms. Praisner.

14  
15 Councilmember Praisner,

16 Well, I'm happy that we're deferring it, especially because it's 12:20 on this issue and I  
17 think there will be significant discussion. It does raise a question about, in my view, our  
18 need to be even more explicit in Master Plans. I'd read this Master Plan, it's clear that  
19 the applicant is reading it a different way, and it's very clear that the community is  
20 reading it another way. So I appreciate the Planning Board's comments on this water  
21 and sewer category change. I'm happy to defer this until we can have further  
22 discussion. I would anticipate that the Planning Board -- I'm a little concerned about  
23 what we mean by the Planning Board bringing back its comments to the T&E  
24 Committee that any deferral obviously, comes back to the T&E Committee, but the  
25 question of timing raises some questions for me. Are we pulling this out separately?  
26 And if so, I would assume that we would allow the community ample opportunity to  
27 comment as well.

28  
29 Councilmember Floreen,

30 Yes, this issue, Ms. Praisner, is -- it was disturbing to me because we'd just done this  
31 Master Plan recently and thought we were getting better with our language. Apparently  
32 we're not quite there yet in eliminating uncertainty about Council direction.

33  
34 Councilmember Praisner,

35 I have a further question. I'd like to understand how Good Counsel could have built the  
36 water and sewer that they did with the lengths and the depth that they did because it  
37 wasn't necessary for Good Counsel. And I want to understand, since that was an  
38 institutional extension, why the broader depth and length and why that was approved  
39 the way it was. I'd like that report separate and to me. Thank you.

40  
41 Councilmember Floreen,

42 Okay, if there aren't any further comments -- again, the next three items are Glen Hills  
43 matters. And we do not -- the collective advice of all of us is to deny the sewer category  
44 change request. This is the area where there is a study that will be occurring and if



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1 there is an opportunity for these applicants to come back as a result of that study, we  
2 shall see, but this is not the point to make decisions on these applications. That is the  
3 two Kevin Smart properties and Ahmad Jamshidi and Guita Vafai, which I've probably  
4 mispronounced. There is item number seven is another recommendation for the  
5 Committee in that area to deny a sewer category change request. This is Ahmad  
6 Jamshidi and Guita Vafai. Again, this is a situation that Council, the recommendation  
7 here is for them to take advantage of an on-site solution as a preferred approach rather  
8 than a sewer extension and we concur with that. The applicant wasn't happy, but we  
9 appreciate the Master Plan limitations and the policy limitations here. Next item is  
10 Carole and Donald Dell. We -- actually there's a little correction to be made in the  
11 packet, right? The Committee recommends the water request here but the --  
12 recommends deferring the sewer category change request. Again, nobody can agree on  
13 what "peripheral" means in the Potomac Plan, and there's that study, if you will recall,  
14 from last time we took this up, where we directed that a study of this peripheral -- the  
15 meaning of the Peripheral Policy Extension Program be further resolved so that we do  
16 not continue to have this disagreement between staff. So we recommend deferring the  
17 sewer category change request so that is resolved, but not the water. And then finally  
18 we have a church, Clarksburg Church of God in the RTD zone in Clarksburg. The  
19 Committee recommendation -- the collective recommendation is to defer the request for  
20 a water connection pending the outcome of a sanitary survey of the neighborhood.  
21 There is no failure, to our knowledge, and consequently it does not rise to the level  
22 where we would otherwise contemplate extending water here. If there are no further  
23 questions that's the Committee report.

24  
25 Council President Leventhal,  
26 That's it. The committee's report is now before the Council. Those in favor of the  
27 Committee's recommendations on water and sewer category changes -- Mr. Levchenko.

28  
29 Keith Levchenko,  
30 Just to clarify, there was an addendum packet that came out with a draft ...

31  
32 Councilmember Floreen,  
33 Yeah, we have to do the resolutions.

34  
35 Keith Levchenko,  
36 With a resolution and tables? And that could be voted on as is, with the one exception  
37 that Councilmember Floreen mentioned regarding the Dell property, where we'll clarify  
38 in there that the water was approved, but that the deferral affects the sewer request. So  
39 that's on the page 3 of 3 of Attachment "A" in the Addendum. The last box.

40  
41 Councilmember Floreen,  
42 The Dell property.

43  
44 Keith Levchenko,



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1 Where right now it says "defer action on the W-3 and S-3 request." Based on the  
2 Committee recommendation and what was discussed today, that can read, approve W-  
3 3, defer action on the S-3 request pending the County Council's review and so forth. So  
4 we can make that change quickly to that.

5  
6 Council President Leventhal,  
7 There is no objection. And so those in favor of the T&E Committee's recommendations  
8 with the notes from Mr. Levchenko will signify by raising their hands. It is unanimous  
9 among those present. We now have a report on the recommendations of the C&O  
10 Canal Task Force.

11  
12 Councilmember Praisner,  
13 Mr. Denis, while folks from the Task Force are joining us at the table and because of the  
14 system that we would, I would ask that everyone, as they get seated, please introduce  
15 yourself. And if you could quickly take your seats, I would appreciate that, too, since  
16 we're well beyond schedule and we need to move on. You need to push the button in  
17 front of you, as well,

18  
19 Karen McManus,  
20 Good afternoon. Karen McManus from the office of Congressman Chris Van Hollen.

21  
22 Katherine Nelson,  
23 I'm Katherine Nelson from Park and Planning.

24  
25 Ginny Barnes,  
26 I'm Ginny Barnes from the West Montgomery County Citizens Association. I'm a  
27 member of the Task Force.

28  
29 Laura Miller,  
30 Laura Miller with DEP, the Montgomery County Department of Environmental  
31 Protection, and I'm also a member of the Task Force.

32  
33 Karen Madsen,  
34 Karen Madsen, I'm with the Montgomery County Civic Federation Environment  
35 Committee. I'm not with the Task Force. I'm with the County Forest Conservation Task  
36 Force -- not speaking for them today. I've chaired a work group called the Montgomery  
37 County Urban Forest Alliance over the last eight months and that's what I'm here to  
38 speak about today.

39  
40 Councilmember Praisner,  
41 Right, We are though getting a report on the C&O Canal Stewardship Task Force. And  
42 in the interest of time, I'm going to turn it over to Mr. Denis to make some comments.  
43 The one point that I would make, and it speaks to your last statement and reference, is  
44 that the report obviously deals with the C&O Canal and that's what the initial issues and



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1 effort was. But this is a broad recommendations that cover the whole county. Issues of  
2 water quality, issues of tree preservation, issues of modifications that need to be made  
3 to existing law, issues of concern about the quality of water and the conditions of trees  
4 and open space within the green space within this county are not exclusively related to  
5 the C&O Canal and these recommendations, which I'm sure Mr. Denis will make  
6 reference to, and I very much appreciate on behalf of the Council the opportunity to  
7 have this presentation will go well beyond -- and the next steps will obviously go well  
8 beyond issues of the C&O Canal. Howie.

9  
10 Councilmember Denis,

11 Thank you, Madam Vice President. As the Council's representative on the C&O Canal  
12 Stewardship Task Force, I want to thank Congressmen Chris Van Hollen for  
13 establishing it and for instructing his staff to dedicate so much time and effort to its  
14 deliberations. I'd like to thank each and every member of the Task Force, some of  
15 whom are present and have introduced themselves, but from the Congressman's staff,  
16 Joan Kleinman, Karen McManus, and [Semitra Seram]. Kevin Brandt and Bill Spinrad of  
17 the National Park Service, State Senator Rob Garagiola of the 15th Legislative District,  
18 Rose Krasnow and Katherine Nelson of the Park and Planning Commission, Laura  
19 Miller, the Montgomery County Department of the Environment, Jim Jamieson of the  
20 Audubon Naturalist Society, Matthew Logan and Meredith Lathbury of the Potomac  
21 Conservancy, Ginny Barnes of the West Montgomery Citizens Association, Kate  
22 Anderson, a community member, and Dan Nees, the Moderator of the Environmental  
23 Finance Center at the University of Maryland.

24  
25 Councilmember Silverman,

26 And I also want to thank my own staff for participating in Task Force meetings.

27  
28 Councilmember Denis,

29 Trees and urban forests are an important natural resource, offering absorption of  
30 stormwater and soil stabilization. They filter ground water. Trees and urban forests  
31 reduce energy consumption, the impact of wind and counteract the heat island effect in  
32 urban communities. They serve as natural filters for air and water quality in an  
33 urbanized community. Trees and urban forests provide habitat for wildlife. They provide  
34 aesthetic and social benefits. Trees and urban forests are natural buffers between  
35 dissimilar land uses. They reduce noise. Trees and urban forests add historical value to  
36 older communities. They create a civic identity for a community. Trees and urban  
37 forests increase property values and provide other economic benefits to property  
38 owners and to the community at large, and they enhance the overall quality of life in  
39 Montgomery County. The C&O Canal Task Force was formed last year. The Task Force  
40 was instrumental in drafting a county law to increase penalties for violations of the  
41 Forest Conservation Law. The Forest Conservation Law was amended by the Council  
42 and the law went into effect December 16, 2005. The Task Force continued to meet. An  
43 objective has been to look at other issues with the Forest Conservation Law and to  
44 make additional recommendations relevant to natural resource conservation. The Task



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1 Force recommendations to intended to enhance conservation of existing forests and  
2 tree resources in the Potomac River Watershed. These changes are intended to  
3 strengthen mechanisms to deter removal of established forests and trees. The  
4 recommendations improve and clarify the definition of "forest" and "forest conservation."  
5 They tighten the afforestation thresholds associated with County zoning categories. The  
6 recommendations refocus efforts on the establishment of forest communities, rather  
7 than tree planting, and they establish a new forest conservation requirement for  
8 redevelopment. Our Council Legislative staff has begun the work of putting the  
9 recommendations into draft legislation. Such legislation may be introduced when the  
10 Council returns next month. As a practical matter, I recognize that the legislation may be  
11 one for the next Council to consider due to calendar restraints. Thank you, Madam Vice  
12 President, and now if the members of the Task Force could make their presentations.

13  
14 Councilmember Praisner,  
15 Thank you, I guess, Karen, you're going to start.

16  
17 Karen McManus,  
18 Right. Thank you. Thank you, everyone. Thank you for giving me the opportunity to  
19 speak with you today about the continuing work of the C&O Canal Stewardship Task  
20 Force. As you know, Congressman Van Hollen formed this Task Force in the wake of  
21 the Daniel Snyder tree-cutting incident. In order to protect and preserve the C&O Canal  
22 National Historical Park, the members of the Task Force have focused on the County's  
23 Forest Conservation Law. Last fall, this Council passed an amendment to the law to  
24 strengthen the penalties for violations such as those committed by Mr. Snyder.  
25 Congressman Van Hollen very much appreciated your prompt and effective action in  
26 passing that amendment. The Task Force is now recommending specific changes to the  
27 law that will enhance conservation of existing forest and tree resources. You all have  
28 copies of the specific changes that the Task Force is recommending and a statement  
29 explaining why we think the changes are appropriate. I'm joined here, as you know, by  
30 three other members of the Task Force. Each will be making a brief statement and each  
31 have been very actively involved in formulating these recommendations. We'll first have  
32 Ginny Barnes of the West Montgomery County Citizens Association, Katherine Nelson  
33 of Park and Planning, Laura Miller, Department of Environment Protection. These three  
34 are our experts and I am therefore delighted to be able to defer questions to them and  
35 thank you again for considering the work of the Task Force. Thank you. Ginny.

36  
37 Ginny Barnes,  
38 Thank you. First I'd like to thank, on behalf of the Task Force, Congressman Van Hollen  
39 for setting up this group which...

40  
41 Councilmember Praisner,  
42 Ginny, can you pull your mic just a little bit closer to you and speak up just a little bit  
43 more.



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1 Ginny Barnes,  
2 I will try. I don't have a very loud voice.

3  
4 Councilmember Praisner,  
5 Thank you. I knew you could. Just try.

6  
7 Ginny Barnes,  
8 Mr. Van Hollen's effort on the setting up of a Task Force has given us an opportunity to  
9 take a broad view, and by having state, federal park managers and officials and state  
10 legislators and county government representatives, as well as the concerned public,  
11 we've really been able to explore some very wide-ranging issues. And it was your effort  
12 to improve the penalties that brought us into this sort of arena where we had a chance  
13 to look at the Forest Conservation Law. So, you essentially set us on the path of  
14 thinking in terms of deterrents, which is what the penalties were designed to do. And  
15 that's what these recommendations are designed to do. They're designed to deter the  
16 loss of existing forest throughout the county. If you've looked at the latest forest  
17 conservation strategy, you know we've gone from, you know, 45% to 28% forest cover  
18 in the county and I don't think that's an accurate figure even so, because it includes the  
19 results of the last Forest Conservation Law round of amendments, whose focus was no  
20 net loss. And no net loss was in terms of acres. And what we're losing -- that means you  
21 cut down an acre, you plant an acre, but we have to start thinking in terms of trees.  
22 Which -- if trees had a long-term plan, they would last 200 years. We don't think that  
23 way. So if you cut down an acre of trees and plant an acre of trees, you are not  
24 establishing forest for quite a while. So I think the purpose here is to take a look at what  
25 forest exists in the county and start to protect what's already there. And that's very much  
26 in keeping with -- I hope you passed the NPDES permit resolution this morning. So it's  
27 very -- this just goes hand in hand with that because forest cover is absolutely critical to  
28 stormwater management, and if we're protecting the trees that now are in the ground,  
29 we will be spending a whole lot less on stormwater management in the future. So I have  
30 also -- since I know there will be concerns about the economics of these  
31 recommendations, I prepared a little colorful beach reading for you all for your vacations  
32 if you'll make sure they get passed out. What you have here is a pie chart. This comes  
33 directly from your County Forest Conservation Strategy. It's an update and it shows the  
34 pollutant removal value of forest canopy in Montgomery County, both in terms -- in the  
35 case of runoff mitigation in terms of dollars and cents. So I think this is really important  
36 to remember, that trees have an economic value. Another thing our recommendations  
37 do is shift the focus from a product to a community. Trees are a community, whether  
38 they're in a forest or whether they're in stands. So we've redefined forest so that we  
39 focus on the community it represents and the function it serves. I hope if you have any  
40 other questions, you'll ask our two forest conservation law experts here, but I think we  
41 are extremely excited as a Task Force to be able to present these recommendations to  
42 you, and we think that they form the opportunity to move forward in a completely  
43 different way, and we think they're timely and appropriate now, while we're building so  
44 quickly and we need to protect what's there. Okay?



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Councilmember Praisner,  
Thank you.

Ginny Barnes,  
Thank you.

Councilmember Praisner,  
Who's next?

Katherine Nelson,  
Katherine Nelson from Park and Planning. Thank you for your interest in the Forest Conservation Law. Our department also has a heightened interest in the law at this time and have formed our own task force to review and resolve various issues. Although this particular task force will be focusing on administrative issues and streamlining process, they will be very interested in the outcome of this task force and this process of updating the law. Our department has reviewed, at a staff level, these recommendations and we do look forward to bringing these to the Planning Board and also taking the opportunity to add some staff recommendations to both streamline and clarify the law. And we're very glad to have been part of the C&O Canal Task Force and part of this process, also.

Councilmember Praisner,  
Thank you. Next.

Laura Miller,  
I'm Laura Miller with the Montgomery County Department of Environmental Protection and likewise, we're very glad to be part of this endeavor to make this law a little more robust and useful, in terms of preserving the benefits that we're getting from the existing trees that we have, as well as planning long-range into the future so that we can always benefit from them. And we have looked at, on a staff level also, and looked at the recommendations and we're looking forward to continuing with this. Thank you.

Councilmember Praisner,  
Thank you. Did you want to make a brief comment?

Karen McManus,  
Yes, just briefly. I wanted to point to the additional recommendation that a tree ordinance be considered by the Council. I wanted to point out that our group has put together a draft set of tree principles that we're going to share with you. We're going to leave copies of this with you. I want to say that what the Task Force -- C&O Canal Task Force has come up with is completely consistent with what we'd like to see, in terms of preserving the urban forest in Montgomery County. Very important.

Councilmember Praisner,



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1 Thank you very much. Questions from Councilmembers? Mr. Andrews.

2  
3 Councilmember Andrews,

4 Thank you. Well, thank you all for the hard work. Good work. This is an example of  
5 good coming out of a bad act of clear-cutting. And so you've really turned the focus,  
6 though, I think, appropriately to what the tree canopy is. It takes dozens, if not  
7 hundreds, of saplings to have the same effect of one large tree would have and the  
8 benefits that has for reducing the speed of stormwater runoff and so on. So we need to  
9 think about the value of the existing trees and factor that in rather than equating the  
10 cutting of -- the planting of one new tree with the cutting of a mature tree. There is no  
11 equivalence there. I don't know if Dan Snyder's childhood hero was Paul Bunyan, but I  
12 think what has come out of this will end up saving a lot more trees than were lost that  
13 day or afternoon. So thank you to Congressman Chris Van Hollen for his leadership and  
14 thanks to all of you for your good work. Thank you, Councilmember Denis and  
15 Councilmember Perez for your leadership on this. And I think that this will result in a  
16 better Forest Conservation Law, and the key word there is "forest." So thank you.

17  
18 Councilmember Praisner,

19 I want to add my thanks on behalf of the Councilmembers that couldn't be here, as we  
20 went over schedule, for your work and for the breadth of it, as well. And know from my  
21 colleagues that there again, as I've said on a number of occasions, Montgomery County  
22 is not an island on this issue nor are we necessarily a leader on this issue. And I would  
23 recommend to folks that we, in this interim, explore the series of grants which the  
24 Chesapeake Bay Foundation and others have given through -- the feds have given to  
25 different communities looking at stream protection, but also looking at tree preservation  
26 so that we see the extent to which we might want to copy. And there is nothing wrong  
27 with copying. I would call to my colleagues' attention e-mail that we received a while  
28 ago, several months ago, from Mr. Burg related to a proposal that he had for an Urban  
29 Tree Canopy Initiative that Baltimore county had initiated growing and planting  
30 additional trees. I would only comment that I want to continue to stress that it is not just  
31 planting trees, but the type of tree that we plant. And a constituent of mine brought that  
32 to my attention again because of some pines that he had been involved in and the state  
33 had used that are not necessarily the best for us to be planting, so whether it's Bradford  
34 Pears that some folks have looked at in the past or some of the pine trees that are not  
35 necessarily ideal for us to use, we need to educate, using the web site and others, using  
36 incentives, as well as requirements. The Baltimore County initiative provides a coupon  
37 of some funding that is a credit against the purchase of trees within the area in order to  
38 provide that incentive. I would also direct my colleagues to Los Angeles Mayor's new  
39 environmental web site. That includes initiatives on his goal to plant at least a million  
40 trees in the Los Angeles area over the next few years. So this is, again, as I said, not a  
41 unique issue to Montgomery County and to the extent we find positive, exciting or  
42 successful programs elsewhere, I think we need to look at those for Montgomery  
43 County. There will be another grant application process through the Chesapeake Bay  
44 Program and we should be looking at supporting communities and looking ourselves.



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1 The County has been successful in receiving some of those awards but some of those  
2 don't have need to have to go -- they benefit from a government partnership but they  
3 don't exclusively have to have a government partnership. And as we go through the  
4 next grant application process, I would hope we can look at some of these initiatives,  
5 especially in certain neighborhoods, to more aggressively look at that neighborhood  
6 with the partnership. I'd probably have to recuse myself from evaluating these  
7 applications, but I think that's not a problem. I'd like to see a ton of Montgomery County  
8 applications. Mr. Andrews.

9  
10 Councilmember Andrews,

11 Thank you. I'd like to reinforce your point about how important is the selection of the  
12 trees we plant. We all know Bradford Pears get wiped out in major storms, and very  
13 costly to replace them and disruptive. There are certain trees that stand out better in  
14 certain areas than others. And the diversity of trees within an area is a factor, too, but I  
15 think that's an important point that you made.

16  
17 Councilmember Praisner,

18 And also with overhead utility wires, the size and the type of the tree becomes an issue,  
19 as well. I want to thank Mr. Denis for his service representing the Council. Obviously we  
20 have a lot of good information here for us to move forward on. Thank the members of  
21 the Task Force and the broader community for their interest and involvement on this  
22 issue. As Mr. Denis indicated, there will be an opportunity, both through the legislation  
23 for an Advisory Committee and through the other regulatory requirements and through  
24 the Council's consideration of legislation that may or may not be introduced for us to  
25 consider these initiatives. Welcome the different departments, continuing to bring us up  
26 to date on your work, administrative work and other work, that may be involved so that  
27 you provide a report or however you want to convey that. I think it would be helpful if the  
28 department heads transmit any information that they have. We are in recess until 1:45.

29 Thank you  
30



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1 [MUSIC]

2  
3 Council President Leventhal,  
4 Good afternoon ladies and gentlemen. This is a public hearing on Zoning Text  
5 Amendment 06-21, which would amend the maximum building coverage for lots under  
6 25,000 square feet, using the cluster option in the RE-1 zone and generally amend  
7 building coverage requirements for clustered lots in residential zones. Anyone who  
8 wants to submit additional material for the Council to consider should do so before the  
9 close of business on September 6th, 2006. The PHED Committee is tentatively  
10 scheduled to take up this matter on September 18th. Please call 240-777-7900 to  
11 confirm the date and time. We have one witness, Mr. Gregg Russ, representing the  
12 Montgomery County Planning Board. Mr. Russ.

13  
14 Gregg Russ,  
15 Thank you Mr. President. Again, for the record, Gregg Russ Montgomery County  
16 Planning Board. The Planning Board reviewed Zoning Ordinance Text Amendment  
17 number 06-21 at its regular meeting on July 27th, 2006. In general the Planning Board  
18 believes there is merit in exploring possible modifications to building coverage  
19 requirements for cluster residential lots. However; the Board does not believe that the  
20 approached as introduced has a broad enough scope. As such the Board recommends  
21 that a working group be established to further study a more comprehensive approach to  
22 the text amendment. The proposed text amendment as introduced amends the  
23 maximum building coverage for lots under 25,000 square feet using the clustered option  
24 in the RE-1 zone. The cluster provision of Section 59-C-1.5 are applicable to 7-1 family  
25 residential zones as an optional development approach that allows the lot sizes to be  
26 decreased to provide for common open space, including the preservation of existing  
27 vegetation. Currently the maximum building coverage requirement for use of the cluster  
28 provisions of the respective zones is the same as those of the standard method of  
29 development. As such the concern raised in the RE-1 zone as listed in the text  
30 amendment could also apply in the other six applicable cluster development zones. The  
31 Planning Board recognizes a delicate balance that building coverage allowances must  
32 adhere to in residential zones. The Board also understands the merit in providing  
33 building coverage for cluster zones that are fair to all concerned parties while also  
34 meeting the intent and purpose of providing usable community open space for active  
35 and passive recreation, and preserving existing vegetation. Prior to the approval of any  
36 related legislation the Board believes that a number of issues need to be addressed  
37 including but not limited to provisions for the cluster or townhouses and duplex units,  
38 and a question of whether the Planning Board should become more involved in  
39 establishing the building coverage requirement in certain instances. Thank you for the  
40 time.

41  
42 Council President Leventhal,  
43 Thank you, Mr. Russ. Vice President Praisner.



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1 Councilmember Praisner,

2 Yes, in the packet from the Planning Board it makes the comment that as stated by  
3 Council staff, the zoning ordinance produces is disincentive to using the minimum lot  
4 size allowed. Using the cluster provisions a house allowed on the smallest RE-1  
5 clustered lot does not meet market expectations. I'm not sure where that comes from,  
6 and I'd like to understand the rational or how we developed or whether we, how we deal  
7 with the issue of responding to market expectations. That would be helpful.

8  
9 Council President Leventhal,

10 Let me respond to Ms. Praisner on that point. Because the language about market  
11 expectation is language composed by staff, not by the ZTA sponsor, and I simply  
12 understood that there was some inequity that if you were not to choose the cluster  
13 option, if you were to disburse these houses more widely on larger lots, that would be  
14 less desirable from an environmental perspective and you could build larger homes. If  
15 you build them in the cluster lots under current zoning in the RE-1 zone the house has  
16 to be smaller and that provides a disincentive for the builder to cluster even though  
17 there are environmental benefits to clustering. So, the language about market  
18 expectations did not arise from the ZTA sponsor.

19  
20 Councilmember Praisner,

21 Thank you, that's helpful.

22  
23 Council President Leventhal,

24 Okay, thank you very much. Agenda Item 14 is a public hearing on a special  
25 appropriation to the FY '07 Operating Budget of the Office of State's Attorney for health  
26 benefits for the State's Attorney Scholars Program in the amount of \$22,050. Action is  
27 scheduled following the hearing. There are no witnesses on this hearing. Ms. Praisner.

28  
29 Councilmember Praisner,

30 Well, I thought maybe Mr. Andrews would comment, it was a joint MFP and Public  
31 Safety Committee recommendation that we approve the proposal to provide the  
32 \$22,050 funds, in order to allow a benefit option for these individuals on a scholar  
33 program. At the same time, we did have a comment that when folks create these non-  
34 benefit positions, we need to be clear about what the implications are and have a  
35 conversation about both whether we agree with that concept, and also whether we,  
36 what the implications might be for an individual applying for the position. Sometimes  
37 these are student type positions and so it's important that we understand that.

38  
39 Councilmember Andrews,

40 That's a good summary. That's what I would have said, so...

41  
42 Council President Leventhal,

43 Mr. Denis.



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1 Councilmember Denis,

2 Thank you Mr. President. As lead member for personnel I just wanted to say that this is  
3 another great idea brought to us by our colleague, Mr. Subin, and of course we continue  
4 to wish him a speedy and complete recovery from his unfortunate accident over the  
5 weekend. The individuals we're talking about here are attorneys. They have passed the  
6 bar. They're referred to as scholars. And they are in court and all this Bill does is  
7 reclassify them to term positions so they can obtain health and life insurance and it  
8 involves roughly four to seven individuals is my understanding, which is why there is  
9 such a low fiscal note attached.

10  
11 Council President Leventhal,

12 Excellent. Thank you, Mr. Denis. There are no further comments. That concludes  
13 Agenda Item 14. The Council will now vote. And those in favor of the special  
14 appropriation will signify by raising their hands. Do we not need six? We'll return to this.  
15 If the clerk will please ring the bell, we do need a sixth Councilmember. And we will  
16 proceed now to Agenda Item, Agenda Items 15 and 16.

17  
18 Councilmember Silverman,

19 We will need six for everything.

20  
21 Council President Leventhal,

22 Okay. So we will recess for five minutes.

23  
24 Councilmember Denis,

25 We can talk about trees some more if you want.

26  
27 Council President Leventhal,

28 Don't leave.

29  
30 Councilmember Silverman,

31 I'm happy to, we can go through these for explanation if somebody shows up if you'd  
32 like.

33  
34 Council President Leventhal,

35 Sure, let's go through the mechanics of the public hearing, although there are no  
36 witnesses, this is a public hearing on an amendment to the Maryland National Capital  
37 Park and Planning Commission's FY '07 through 2012 CIP for legacy open space. We  
38 have five minutes for Councilmembers to talk about how much we love legacy open  
39 space. We believe in legacy open space, it's a vitally important program that protects  
40 green spaces throughout Montgomery County. I'm watching the clock and hoping a  
41 sixth Councilmember will arrive.

42  
43 Councilmember Denis,



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1 I want to wish everybody a happy August 1st. This month is named after the first roman  
2 emperor Augustus, so if he hadn't passed away when he did, he would be well over  
3 2,000 years old at the present time.

4  
5 [LAUGHTER]

6  
7 Councilmember Denis,  
8 And he did live to be a very old age, he wife's name was Livia, and he was of the Julio  
9 Claudian line, he was known as the first Roman emperor. It was said of him he found  
10 Rome a city of brick, and left it a city of marble. So that's why this month is named after  
11 Caesar Augustus.

12  
13 Councilmember Perez,  
14 And no doubt he would have approved of...

15  
16 Multiple Speakers,  
17 [INAUDIBLE]

18  
19 Councilmember Denis,  
20 Oddly enough the next month, September, "sept" means seven, but it's the ninth month.  
21 Of course, October, "oct" means ten, and so, but there you are. Somehow September is  
22 in the wrong place. We just came out of July, which is named for Julius Caesar, and I  
23 can continue, while we're waiting for some of colleagues to... Let me see, March after  
24 Mars.

25  
26 Council President Leventhal,  
27 The good that men do dies with them, but the bad, the evil that men do dies with them,  
28 the good is oft interred with there bones. This is a public hearing on an amendment to  
29 the Maryland National Capital Park and Planning Commission's FY '07 through 2012  
30 CIP for legacy open space; it is also a public hearing on a special appropriation for the  
31 FY '07 capital budget for legacy open space in the amount of \$1.8 million. Action is  
32 scheduled following the hearing. We have no witnesses. Chairman Silverman will tell us  
33 about the urgent need for these special appropriations.

34  
35 Councilmember Silverman,  
36 Thank you Mr. President. The Planning Housing and Economic Development  
37 Committee supports all but two of the revised special appropriations with the  
38 amendments described below. The easiest way to outline these is a chart that's  
39 contained on page two. We support Elmhurst Parkway Neighborhood Park. Let me back  
40 up and say we had a boatload of money from the state for legacy open space. I think it's  
41 like three or four.

42  
43 Marlene Michaelson,  
44 For POS or rather...



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1  
2 Councilmember Silverman,  
3 P-O-S, Program Open Space. We got \$24 million. We don't have all of that before us to  
4 consider. We've got I think about half of it, give or take.

5  
6 Marlene Michaelson,  
7 And some of it is in the approved CIP.

8  
9 Councilmember Silverman,  
10 Right, already, so with Elmhurst Parkway Neighborhood Park, it's a \$46,000 item. It just  
11 simply will replace Park and Planning bonds with program open space money, not  
12 controversially. Takoma/Piney Branch Local Park is \$198,000, again it's just a substitute  
13 for Park and Planning bonds. Then there is \$2 million for acquisition of nonlocal parks.  
14 That's new money. The committee did support it but deferred an appropriation pending  
15 a review for potential sites and we did the same thing with local parks acquisition which  
16 is little over \$2.5 million. The reason is because we were unaware, excuse me, we did  
17 not have enough time to have extensive discussion about the prioritization of the  
18 monies that would be, where those monies would go in terms of which nonlocal parks  
19 and which local parks were in support of the expenditure of money. We just deferred the  
20 appropriation until September when we'll have a chance to revisit this issue more  
21 comprehensively in connection with the successor to the PROs plan. Which is whatever  
22 we're calling it. Greenbriar Local Park is a \$480,000 new item which would increase  
23 bond funding in the early years. We deferred on that and the Black Hill Trail extension  
24 and renovation because those, because those were both, one was G.O. Bond funding,  
25 one was Park and Planning bond funding. We will have a chance again to incorporate  
26 that into a broader discussion to determine whether these are the two projects that the  
27 Council would agree with need to be accelerated. Ball field initiative, the request is for  
28 \$600,000. It would decrease G.O. Bond funding for the first field. I'm just going to finish  
29 this. It would increase it for the third field. The committee supported a shift in funding for  
30 the first field because it increases our program open space money and decreases G.O.  
31 Bonds by \$562,000, but we deferred consideration of the third field so we can have a  
32 discussion in the fall about after Planning staff is reviewed the high school field. This is  
33 in connection with synthetic terms. So, we really want to have a whole range of options  
34 before us. Finally, for nonlocal parks, PLAR, \$750,000 for only tennis lights and  
35 Wheaton Adventure playground renovation. This would increase G.O. Bond funding by  
36 a little over \$1.4 million, but the Committee supports it and there will be enough time to  
37 come back in the fall to deal with requests for additional dollars. This is what Park and  
38 Planning could put on the table. Finally, legacy open space, \$3.6 million is, committee  
39 supported this decreases the general obligation bonds by \$3.6 million and the  
40 committee supports that. That is just a replacement, and that's reflected in the Agenda  
41 Items 15 and 16 in terms of the special appropriation under the legacy open space  
42 program. That's the Committee's report.

43  
44 Council President Leventhal,



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1 Thank you, Mr. Chairman. The Council stands in recess until 2:15, colleagues do not  
2 believe the building, thank you.

3  
4 [MUSIC]

5  
6 Council President Leventhal,  
7 Chairman Silverman.

8  
9 Councilmember Silverman,  
10 I forgot to explain one thing, which I've been reminded of, which is that we did, no, no,  
11 we set aside, where is it here? Storm water damage, right Marlene? Is that what we're  
12 coming back with? In other words, there is into money in this appropriation.

13  
14 Marlene Michaelson,  
15 There is money in the PLAR of about \$1.4 million for storm damage. The Department is  
16 continuing its assessments and is likely to come back with additional requests. This is a  
17 piece of it.

18  
19 Councilmember Silverman,  
20 I'm sorry, I apologize. Of the \$1.484 million that's in PLAR only \$750,000 is for Olney  
21 tennis lights and Wheaton Adventure playground.

22  
23 Marlene Michaelson,  
24 No. The match of the G.O. Bonds is actually \$250,000.

25  
26 Councilmember Silverman,  
27 How much in this relates to storm damage?

28  
29 Marlene Michaelson,  
30 \$250,000 of G.O. bonds.

31  
32 Mike Reilly,  
33 For the record, Mike [Reilly], Chief of Park Development. The \$1.484 million is all for  
34 storm damage. You're adding 750,000 additionally in program open space for the  
35 Wheaton tennis center.

36  
37 Marlene Michaelson,  
38 My understanding is that includes \$250,000 in bonds as the match for the tennis lights.

39  
40 Councilmember Silverman,  
41 Okay. So with that clarification, because we did have these storm problems, we've got  
42 damage out there and they'll be coming back to us presumably with some of the monies  
43 potentially in the fall. Once you've assessed, I mean there is a lot of players, we're trying



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1 to get federal money, et cetera. We know they're going to do a great job, getting as  
2 much recovered as possible. Okay. So that's what I wanted to add.

3  
4 Council President Leventhal,  
5 Very good. Thank you, Mr. Chairman. The matter now before the Council is the special  
6 appropriation for legacy open space. We need to do, very good. We are now on Agenda  
7 Item 14, a special appropriation for health benefits for the State's Attorneys Scholars  
8 Program. Those in favor will signify by raising their hands. It is unanimous among those  
9 present. We now have before us Agenda Item 15, special appropriation for legacy open  
10 space as described by Chairman Silverman. Those in favor will signify by raising their  
11 hands. Thanks, just for the record Vice President Praisner, do want to move the State's  
12 Attorneys special, oh we already had the committee's recommendation. We have the  
13 committee's recommendation on that.

14  
15 Councilmember Praisner,  
16 We just voted...

17  
18 Multiple Speakers,  
19 [INAUDIBLE]

20  
21 Council President Leventhal,  
22 We did. And just for the record, let us clarify that the recommendations on Items 15 and  
23 16 were before us on block from the PHED Committee, and the Council just now, it is  
24 unanimous among those present, in favor of both Items 15 and 16 on block. Now,  
25 before the Council our special appropriations to the Park and Planning Commission's  
26 Item 17, for several CIP items already described by Chairman Silverman. They have  
27 been recommended by the PHED Committee. They are now before the Council. Those  
28 in favor will signify by raising their hands. It is unanimous among those present. Item 18,  
29 also described by Chairman Silverman are Elmhurst Parkway Neighborhood Park and  
30 Tacoma-Piney Branch Local Park recommended by the committee. Those in favor will  
31 signify by raising their hands. It is unanimous among those present. And our last item,  
32 Item 19, two special appropriations to the Park and Planning Commission's Capital  
33 Budget and Capital Improvement Programs for nonlocal parks. Those in favor will  
34 signify by raising their hands. It is unanimous among those present. Let me just say, as  
35 we adjourn for the month of August, with all sincerity, I wish all residents of Montgomery  
36 County and particularly my friends and colleagues up here, and particularly if you're  
37 watching Councilman Subin, who is recuperating in the hospital right now, a wonderful  
38 summer and a very successful election campaign. The Council is adjourned until -- the  
39 Council is adjourned until September 19th.

40  
41 [MUSIC]  
42